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SPEECHES AND DOCUMENTS ON THE INDIAN CONSTITUTION 1921-47

VOLUME I

SPEECHES AND DOCUMENTS
ON THE
INDIAN CONSTITUTION
1921-47

VOLUME I

Selected by

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With an Introduction by A. APPADORAI

OXFORD UNIVERSITY PRESS
BOMBAY LONDON NEW YORK
1957

ACKNOWLEDGEMENT

The editors wish to make acknowledgement to the Indian Council of World Affairs through whose good offices access was obtained to many of the documents reprinted in this selection.

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INTRODUCTION

In his famous speech in the House of Commons on the Charter Bill of 1833, Macaulay, who then held the post of Secretary to the Board of Control (which exercised supreme supervisory authority in respect of Indian affairs), said : 'It may be that the public mind of India may expand under our system till it has outgrown that system ; that by good government we may educate our subjects into a capacity for better government ; that, having become instructed in European knowledge, they may in some future age demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert it or retard it. Whenever it comes it will be the proudest day in English history.' Such sentiments were often expressed by British statesmen and administrators, but reforms in the democratic direction were slow in coming. Although Bentinck and Dalhousie had advocated the inclusion of eminent Indians in the Legislative Council, it was not until 1861 that the first step in this direction was taken. But, even after fifty years, under the reforms of 1909, a majority of official members was maintained in the Central Legislature, and a majority of nominated members (official and non-official) in the Provincial Legislatures, except in the Province of Bengal, wherein the elected members were in a majority of two. No claim was made at the time that the Government of India was in any sense democratic. Morley, the Secretary of State for India, disclaimed that his proposals led directly or necessarily to the establishment of a parliamentary system in India. While he hoped that India would reach the status of a self-governing colony some day, he made no secret of his conviction that 'for many a day to come—long beyond the short span of time that may be left to us—this was a mere dream'. Similar views were expressed by Lord Crewe, who succeeded Morley as the Secretary of State for India. The official policy from 1861 onwards was to associate Indians in an increasing degree with the administration of the country, but there was no intention to develop self-governing institutions.

Almost until the dawn of the present century the people of India seemed to acquiesce in this policy of their masters with mild protests and prayers for a better deal. The first popular movement began under the leadership of Tilak in Maharastra in the nineties of the last century, and the partition of Bengal in 1905 gave a great fillip and a radical turn to the nationalist movement. In 1906 Dadabai Navroji, in his Presidential address to the annual session of the Indian National Congress, placed before the people *swaraj* or self-government as the goal to be attained. World War I had a remarkable effect on the attitude of both the rulers and the ruled. In India there was a great quickening of political consciousness. The Home Rule movement led by Mrs Annie Besant and Tilak created considerable enthusiasm among the mass of the people. In England, too, there was a good deal of re-thinking and re-evaluation of old policies, and these led to the historic announcement of 20 August 1917 : 'The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. . . . I would add that progress in this

policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.' The Government of India Act, 1919, which came into operation on 1 January 1921, was the first step towards the realization of this goal, and the last step was taken on 15 August 1947, when India and Pakistan attained their independence. The documents collected here relate to the intervening eventful years.

In studying these documents there are two lines of development which should be clearly borne in mind. First, there were the changes in the constitutional set-up from time to time, and secondly, there were the political forces at work which should explain and account for these changes. As regards the first, three distinct stages of development can be traced. The enactment of the Government of India Act, 1919, constitutes the first step. A system of dyarchic government was introduced in the Provinces, and certain departments such as Education and Local Self-Government, in the handling of which popular representatives could best receive their first lessons in the art of democratic government, were transferred to popular control. As a result of the recommendations of the Reforms Enquiry Committee of 1924 there was some slight addition to the number of subjects transferred to popular control, but the system as a whole was in force until 1937. The second stage of development is marked by the enactment of the Government of India Act, 1935. In the Provincial sphere, the Act provided for full responsible government, subject to certain restrictions. In the Central sphere, it provided for the establishment of a Federation of British Indian Provinces and Indian States, and popular control was to extend, speaking generally, over all subjects except Defence, Foreign Affairs and Ecclesiastical Affairs. While the provisions in respect of the Provinces were in force from 1937 to 1947, the proposed Federation never came into being. The last stage of development is marked by the enactment of the Indian Independence Act, 1947, by which power was transferred to the Constituent Assembly of India and that of Pakistan in respect of British India, and paramountcy in respect of the Indian States was declared to have lapsed.

Much of the significance of the constitutional changes sketched above was lost because the largest and most influential party in the country, the Indian National Congress, was unwilling, over the greater part of the period covered in this collection, to give its co-operation in making them a success, and a similar policy was pursued by the Muslim League. During the entire period covered by the documents, interest centred, not around administrative achievements or the manner in which the machinery of government worked, but around the struggle of the Indian people as a whole to secure independence, and the internecine struggle among the various elements within the country to secure protection as to what each regarded as its legitimate interests. Speaking generally, the principal participants in the game were the British Government, the Indian Princes, the Indian National Congress representing the vanguard of the nationalist movement, and the minorities, in particular the Muslims led

by the All-India Muslim League. The interaction of their conflicting views and policies, and world forces, particularly those generated by the two world wars, largely determined the course of events. In the following pages a brief account of the developments is given to enable the reader to study the documents included in the volume in their proper setting.

Reforms of 1919

The first part deals with the working of government from 1921 to 1937, that is the operation of the reforms introduced by the Government of India Act, 1919. The basic principle of government prior to these reforms was that both authority and responsibility for the governance of India was vested in the King in Parliament, and this power was exercised through the agency of the Secretary of State for India in Council at London, the Governor-General in Council at the Centre and the Governors in Council in the different Provinces. The association of Indians in the legislative sphere was only intended to acquaint the rulers with the thoughts and wishes of the governed, and neither the responsibility nor the authority of the British Parliament or its agents was intended to be impaired by this in any manner.

The historic announcement of 20 August 1917 proposed a gradual transfer of this authority to Indian hands, and the Government of India Act, 1919, constituted the first step in this direction. Since transfer of responsibility in the sphere of the Provincial Governments as a whole was considered premature, a dyarchic system of government was established. Under this system Ministers, responsible to the Legislatures, were to be in charge of such subjects as were 'transferred' to popular control, and the Governor and Councillors were to be in charge of the remaining subjects and were to continue to be responsible to Parliament in respect of them. The list of subjects transferred to popular control[1] included Local Self-Government, Medical Administration, Education other than European and Anglo-Indian Education, Agriculture, Fisheries, Co-operative Societies, Excise, Development of Industries, and Religious Endowments. The list of Reserved subjects[2] included Land Revenue Administration, Famine Relief, Administration of Justice, Police, and Prisons. The following principles were taken as the basis for selecting subjects for transfer : (1) those which afforded most opportunity for local knowledge and service ; (2) those in which Indians had shown themselves to be keenly interested ; (3) those in which mistakes, though serious, would not be irremediable ; (4) those which stood most in need of development ; and (5) those which concerned the interests of the classes which would be adequately represented in the Legislature and not those which could not be so represented. On the other hand, it was not considered advisable to transfer at that stage subjects relating to law and order on which the peace and tranquillity of the country depended, or a subject such as Land Revenue Administration, which formed the pivot of the whole administrative edifice. While the functions of the two halves of the Government

[1] pp. 56-61. References to pages given here and subsequently in the Introduction refer to the pages of the text.

[2] List of Provincial subjects on pp. 155-61 omitting the Transferred subjects on pp. 56-61.

were clearly demarcated, it was considered inadvisable to provide separate sources of revenue. The allocation of expenditure was to be a matter of agreement between the two sides, the Governor acting as the arbiter in cases of difference of opinion. All taxation measures or proposals for raising money by borrowing were to be considered by the whole Government, but a decision was to be arrived at by that part of the Government in which the proposal originated.[1] Since the Ministers and the Governor in Council were responsible to different authorities, the Governor was instructed to regulate the business in such a way that, so far as was possible, the responsibility of the two halves of Government in respect of matters under their respective controls was kept ' clear and distinct '. Without prejudice to this, however, he was to encourage the habit of joint deliberation between the Ministers and the Councillors ' in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors '.[2]

The dyarchic arrangement sketched here was essentially a transitional arrangement. Although power was transferred to popular control in respect of certain subjects and the Governor was directed to act on the advice of his Ministers, he could refuse to accept such advice when he saw ' sufficient cause to dissent from their opinion '. He was to guide and assist his Ministers in the discharge of their duties ; but he could overrule them and act on his own responsibility when the consequences of acquiescence to their wishes were likely to prove serious, when the safety and tranquillity of the Province was threatened, when the interests of minority communities, communal or racial, or of the members of the public services were affected, or when unfair discrimination was made in matters affecting commercial or industrial interests. But he was always to remember the ultimate object of the reforms, that the people were to be trained to ' acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government '.[3]

On the legislative side the Councils were considerably enlarged. The Act laid down that the elected members should be not less than 70 per cent and the official members not more than 20 per cent. In 1926 the composition of the Legislatures[4] of all the Provinces taken together was as follows : 14·5 per cent officials, 8·6 per cent non-officials nominated to represent Aborigines, Backward Tracts, Depressed Classes, Anglo-Indians, Labour, etc., 9·9 per cent elected members representing special interests, viz. Landholders, University, Commerce and Industry, etc., and 67 per cent elected members returned through territorial constituencies. And the last category was subdivided on the basis of community into General, Muslim, Sikh (in the Punjab), Indian Christian (in Madras), Anglo-Indian (in Madras and Bengal), and European (in all the Provinces except the Punjab, the Central Provinces and Assam). The General constituency included voters who did not find a place in any of the communal constituencies. In the distribution of seats minority communities were given weightage or representation in excess of the population ratio.

[1] p. 91.
[2] Instrument of Instructions to Governors. Pp. 53-5.
[3] ibid.
[4] See table at p. 128.

As regards franchise, property qualifications were considerably lowered, and women were given the right to vote in all the Provinces. In 1926 the proportion of persons enfranchised to total population stood at 2·8 per cent.

As for the powers and procedure of the Legislatures it is enough to say that normally all legislative measures and the annual budget were to be passed by the Legislatures. Since the Reserved halves of the Governments were not responsible to them, the Governors were empowered to certify such bills and restore such grants as were rejected or refused by them, if they considered such action necessary for the proper fulfilment of their responsibility to the Parliament.[1]

The transfer of power to Indian hands made it necessary to give a precise and legal form to the division of functions between the Centre and the Provinces, and lists of subjects inclusive of sources of revenue were drawn up for the purpose.[2] As there was no transfer of power at the Centre, the Governor-General in Council continued to be responsible to Parliament through the Secretary of State in Council in respect of all matters. The composition of the Executive Council was liberalized by the inclusion of more persons of Indian nationality.

As regards the Central Legislature, two Houses—the Council of State and the Legislative Assembly—were constituted in place of the one that existed before. The Council of State[3] which formed the Upper House, was composed of 60 members, of whom not more than 20 were to be officials. The Legislative Assembly,[4] which formed the Lower House, had 145 members, but the strength could be raised if necessary. At least five-sevenths of the members were to be elected members and at least one-third of the other members were to be non-officials. The representation of communities and of special interests was broadly on lines similar to those followed in respect of the Provincial Legislatures. Except in the case of the Special Constituencies, the elected members of both the Houses were returned through territorial constituencies by direct election on the basis of a high property franchise, the qualifications in respect of the Upper House being set very much higher than those of the Lower House. As in the Provincial Legislatures the normal procedure was that all legislative measures and the annual budget relating to the Centre should be passed by the Central Legislature. But since the ultimate responsibility of the Governor-General in Council for the governance of India was to Parliament and not to the Central Legislature, the Governor-General, in his individual capacity, was empowered to certify Bills and restore grants not approved by the Legislature, and he was also empowered to issue Ordinances.[5]

As regards the control of the Home Government, it was accepted as a basic principle that to the extent power was constitutionally transferred to Indian hands, intervention by Parliament and its agents should cease.[6] In an important ruling of the Speaker of the House of

[1] pp. 132-4.
[2] pp. 153-61.
[3] See table on p. 36.
[4] See table on p. 35.
[5] pp. 37-41.
[6] p. 19.

Commons in 1921, it was laid down that parliamentary criticism should not extend to the Transferred subjects in the Provinces.[1] As regards the Central Government and the Reserved subjects in the Provinces, since legal responsibility in respect of them continued to be vested in Parliament, there could be no abrogation of control. But, in respect of these matters also, the situation caused by the creation of Legislatures with large elected majorities made a change in policy highly desirable. The Joint Select Committee of Parliament on the Government of India Bill, 1919, accordingly recommended: 'In the exercise of his responsibility to Parliament, which he cannot delegate to anyone else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.'[2] In view of public criticism in the past that India's fiscal policy was dictated from Whitehall in the interests of British trade, the Committee drew particular attention to the need for establishing a convention by which the Secretary of State avoided interference in this subject as far as possible when the Government of India and the Indian Legislature were in agreement. It observed that the relations of the Secretary of State for India and of the Governor-General in Council with the Provincial Governments should be regulated by similar principles so far as the Reserved subjects were concerned.[3] The fiscal convention in respect of tariff policy referred to above was accepted,[4] but this could hardly satisfy Indian opinion, because the Governor-General and the majority of the members of his Council were British and their first loyalty would naturally be to their own country. The proposed convention in respect of the Provincial Reserved subjects found appropriate reference in the Instrument of Instructions issued to the Governor-General of India.[5]

Working of the Reforms, 1919-37

When the reforms of 1919 were on the anvil there were wide differences of opinion as to the quantum of responsibility to be transferred to Indian hands. The Home Rulers led by Bal Gangadhar Tilak and Mrs Annie Besant believed that India was fit for full responsible government, while other Indian leaders regarded the step to be much too revolutionary. A liberal like Montagu would have liked to go a long way with the Home Rulers, but he had quite a job in carrying his official colleagues with him even as far as he did. The reform proposals were received quite well at the beginning. When the question came up before the full session of the Indian National Congress at Amritsar, Gandhi, who had recently entered the Indian political scene, arguing against the extremist stand for rejection, said, 'If I get a sour loaf I reject it, and I do not take it. But if I get a loaf which is not enough, which has not sufficient condiments in it, I shall use it, I shall add condiments to it and take a bit. . . . The King Emperor has extended a hand of fellowship.

[1] pp. 15-16.
[2] p. 18.
[3] ibid.
[4] pp. 28-9.
[5] pp. 29-30.

Mr Montagu has extended the hand of fellowship. Do not reject the advance. The Indian culture demands trust and full trust, and if you are sufficiently manly we shall not be afraid of the future.'[1] And the Congress passed a resolution promising to co-operate, so to work the reforms as to secure the early establishment of full responsible government.[2] Moderate leaders were full of enthusiasm. Surendranath Banerjee, in his Presidential address to the First All-India Conference of the Moderate Party, referring to the hand of fellowship that had been offered by Britain, said: 'Let us grasp it with alacrity and enthusiasm; and in co-operation with British statesmen let us march forward to the accomplishment of the high destinies that, under the providence of God, are in store for us.' But this spirit was short-lived. The Punjab disturbances culminating in the tragedy of Jallianwala Bagh and the publication of the Turkish peace terms effected a speedy and startling change. The Duke of Connaught, who inaugurated the new constitution on 1 January 1921, saw 'bitterness and estrangement between those who have been and should be friends', and the shadow of Amritsar lengthened 'over the fair face of India'.[3] Faith and trust had given place to disappointment and distrust. Gandhiji, who had fought for a policy of co-operation in working the reforms, came to feel that 'not only did the reforms not mark a change of heart but they were only a method of further draining India of her wealth and of prolonging servitude'.[4] And this want of faith in the British bona fides persisted till the achievement of independence in 1947, and there was little room for constitutional development through a policy of co-operation between India and Britain as envisaged by the announcement of 1917.

When the new constitution was inaugurated the non-co-operation movement led by Gandhiji was in full swing. Congressmen boycotted the elections to the first Councils, with the result that the first Councils came to be dominated by the moderate elements. This development led to a stiff fight within the Congress over the wisdom of boycott. Those who were opposed to this policy argued that it was wrong to allow 'anti-nationalist' elements to capture the Councils and misrepresent to the world the nature of the popular will. They wanted to enter the Councils, not to co-operate in working the reforms, but to non-co-operate from within and bring about a breakdown of the constitution. Their view prevailed and a party designated the Swarajist Party was formed. In the elections to the second Councils the Swarajists were highly successful, but they were in sufficient strength only in Bengal and the Central Provinces to prevent voting of supplies, including Ministers' salaries, and force a breakdown. That the success of the Swarajists was limited was no doubt due largely to the structure of the Councils: the nominated elements, officials and non-officials, were nearly 30 per cent of the Councils; and the special constituencies and communal electorates also sided with them. The formation of Ministries in nearly all the Provinces in the teeth of their opposition led to a further development. One section of

[1] *The Indian Annual Register* (1919), vol. I, p. 382.
[2] p. 1.
[3] *The Indian Annual Register* (1922), vol. II, p. 113.
[4] Statement during the course of his trial on 18 March 1922.—*The Indian Annual Register* (1922-3), vol. II, p. 413.

the party, led by men like N. C. Kelkar, Dr Moonje and M. R. Jayakar, argued that under the prevailing circumstances the Swarajists should accept ministerial responsibility to prevent moderate elements from holding the portals of power and influence. They wanted what they termed a policy of responsive co-operation to be pursued. Unable to carry the party with them, they broke away and allied themselves with the Liberals, whose policy was akin to theirs. This rift left the Swarajists in a somewhat weaker position in the third Councils, but they maintained their policy of uncompromising opposition so far as the changed circumstances permitted. By the time of the fourth Councils, the Congress reverted to its policy of boycott, and in the absence of the principal party of the country the proceedings of the Councils lost much of their significance.

The literature that has gathered around the working of the reforms is quite large. This is chiefly because the Reforms Enquiry Committee, 1924, and the Indian Statutory Commission, 1927-30, made searching inquiries and collected a mass of material. From a constitutional angle there are three important aspects to the study of these documents : (1) the manner in which responsible government worked in the sphere of the Transferred subjects ; (2) the working of Dyarchy, which was a unique experiment in the art of government ; and (3) how far public opinion made itself felt both at the Centre and in the Provinces in respect of the Reserved subjects.

It will be seen from the documents that responsible government as was envisaged can hardly be said to have functioned in the Transferred field. This was largely the result of the refusal of the Swarajists, who formed the largest single party in most of the Legislatures, to form Ministries and their continued efforts to bring about a breakdown. The prevailing atmosphere was uncongenial to the growth of parties favourable to the Government and to the working of the reforms. The only well-knit parties of some importance which co-operated with the Government were the Unionist Party in the Punjab, the Krishak Praja Party in Bengal and the Justice Party in Madras, and these developed more or less on communal lines. And in these Provinces there was some approximation to responsible government at certain periods. Subject to these exceptions, in all the Provinces the Ministers were selected from groups whose hold on the Legislatures was precarious, and were kept in power with the votes of the official and the nominated members. In the third Councils, the Indian Statutory Commission remarked that 'there was no Legislature in which the official bloc was not an actual or potential balancing factor'.[1] The Ministers were generally looked upon as part of the official Government and had to share much of its unpopularity. Further, the spirit of corporate responsibility among Ministers, which is an important characteristic of responsible government, could hardly develop when the Ministers were chosen *ad hoc* by the Governors, and there was no stable coalition of members who could be relied upon to support them.

As regards the working of Dyarchy it is important to remember that it had not been constituted on the principle of full-fledged dualism. While there was a clear demarcation of the subjects to be dealt with by the two halves of the Government, there was no corresponding division of

[1] p. 138.

revenues or of sources of revenue to meet expenditure. The annual budget was drawn up jointly, and if fresh funds were required it was the responsibility of that part of the Government that initiated it. A 'joint purse system', as it was termed, had been introduced in preference to a 'separate purse' system, and finance was thus a matter of common concern. There was also a common civil service and a common legislature. With so much in common it would not have been possible to run the two halves of the Government as if they were wholly separate, self-sufficient entities. Joint deliberation in matters of cabinet importance was provided to secure unity in administrative policy. Indeed, the authors of the Montagu-Chelmsford Report were quite conscious of the biggest anomaly in Dyarchy, the artificial division of an administration which was essentially one. They deliberately instituted 'joint purse' and 'joint deliberation' to bridge the gulf and make Dyarchy workable. They even hoped that these would help in making the transition to responsible government in respect of the Transferred subjects smooth and easy. While speaking on the second reading of the Government of India Bill, Montagu said : 'If Reserved subjects are to become Transferred subjects one day, it is absolutely essential that during the transitional period, although there is no direct responsibility for them there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility there ought to be every room that you can possibly have for consultation and deliberation, as the Bill provides, in one Government.' And, he further observed, 'If the circumstances of a particular Province make it possible, there is nothing in the Bill which would prevent a Governor trying to discharge all the reserved functions as if they were transferred.'[1]

If the Swarajists had accepted office, the Reserved half of the Government would have had to face Ministers strongly backed by the Legislature, intent upon asserting their rights and trying to enlarge the sphere of their influence. In such a situation the Governor might have felt the need more and more to use the special powers vested in him ; but the exercise of these powers, though perfectly legal, would have embittered his relationship with the Ministers and might have ultimately led to a breakdown. Or, alternatively, the Governor might have yielded ground step by step, and the range of ministerial influence gradually extended over the Reserved field. The Responsivists in the Congress camp, who favoured acceptance of office, believed that the latter would be the course of development, and liberals of the type of Montagu would have welcomed it, provided there were no too sharp joltings.

Because of the Swarajists' refusal to form Ministries, constitutional development took a different course. As has been mentioned, Ministers had to be propped up and maintained in office with the votes of the official and nominated members, and they were naturally in too weak a position to assert themselves. It is true, on the other hand, as the Statutory Commission pointed out, that the Reserved half of the Government was also desirous of obtaining the support of the Ministers' followers in the Legislature to measures initiated by it, being 'unwilling to invoke, save as a last resort, special powers of restoration and certification'.[2] But

[1] *Report of the Reforms Enquiry Committee* (1924), p. 158.
[2] p. 135.

the very existence of these powers definitely gave them a better bargaining power. On the whole, it may be said that instead of an extension of popular influence over the Reserved field as envisaged by Montagu, there was retention of some official influence over the Transferred field. The resignations in 1923 of Sir Chimanlal Setalvad, a Bombay Minister, and of C. Y. Chintamani and Pandit Jagat Narayan, Ministers of the United Provinces, the well-known leaders of the Liberal Party who had accepted office in the face of mounting popular opposition, were a protest against the trend. But other Ministers were more pliable and there was much less friction in the executive sphere than might have been anticipated.

At the Centre, there was some extension of opportunities for the exertion of popular influence by a growth of conventions. The Government of India observed : ' The most firmly established of all conventions is the Fiscal Convention, but the general discussion of all supply, the separation of railway finance, the discussion during demands of non-voted expenditure, the annual readjustment of ways and means, the appointment of standing departmental committees, and the enlargement of the powers of the Standing Finance Committee are all tending to harden into recognized conventions.'[1] But one important convention recommended by the Joint Parliamentary Committee was, however, not adopted, except in respect of the Fiscal Convention, viz. that the Secretary of State should not ordinarily intervene in matters of purely Indian interest where the Government and Legislature in India were in agreement.[2] Indian opinion, however, did not attach much importance to constitutional advancement by a growth of conventions, which was necessarily a slow process ; what it wanted instead was a clear transfer of power at an early date.

Towards the New Constitution, 1921-37

The Montagu-Chelmsford Reforms failed to satisfy the political aspirations of the country even at the time of their introduction and all parties joined hands to agitate for a further revision of the Constitution. In the very first year of the reformed Councils, a resolution was moved in the Central Legislative Assembly urging the establishment of full responsible government in the Provinces after the period of the first Councils, and a simultaneous transfer to popular control of all the Central Departments, excepting those relating to Army and Foreign Affairs. The pressure of public opinion led to the appointment of the Reforms Enquiry Committee in 1924, presided over by the Home Member to the Government of India, Sir Alexander Muddiman, and the Committee included a number of non-official members. The terms of reference limited the discretion of the Committee to suggesting ways and means of constitutional advance ' by the use of rule-making power provided by Parliament under the statute ', and the suggestions were not to extend ' beyond that scope to the amendment of the Constitution itself '.[3] The Committee reported in March 1925. The majority were of the opinion that the system had not been given a fair trial and suggested only a few minor

[1] p. 50.
[2] pp. 19-21.
[3] p. 4.

changes.[1] The minority felt that the dyarchic experiment had clearly failed and no alternative transitional system could be devised. What was needed was a Constitution framed 'on a permanent basis, with provisions for automatic progress in the future so as to secure stability in the Government and willing co-operation of the people'.[2] To this end they recommended the appointment of a Royal Commission or any other agency with freer terms of reference and a larger scope of inquiry.[3] On 7 July 1925, Lord Birkenhead, the Secretary of State for India, announced that it was only on the lines of the majority report that any immediate action could be taken and the recommendations of the minority could not be accepted,[4] and there were some minor additions to the list of Transferred subjects.[5] The agitation for further reforms continued, but there appeared to be no prospect of any change in the policy of the British Government. Indeed, on 24 January 1927, Lord Irwin, then Governor-General, warned that Parliament would not in any way be moved by the policy of coercion pursued by the Congress and that the future of the country lay in a policy of co-operation in the working of the reforms.[6] But, before the close of the year, on 8 November 1927, Baldwin, then Prime Minister, announced the appointment of a Royal Commission, two years before the time laid down in the statute. The Commission was composed of seven members of Parliament with Sir John Simon as the Chairman.[7] The Indian mind was working on the lines of a Round Table Conference or a mixed commission of Indian and British representatives, and the exclusion of Indians provoked deep resentment both among Congressmen and the Moderates.[8] Sir Tej Bahadur Sapru, noted for his balance and moderation, observed that no worse challenge had ever been thrown out to Indian nationalism.[9] The Commission worked in an atmosphere of boycott and non-co-operation and submitted its report on 27 May 1930.[10] The parties that refused to co-operate with the Commission organized an All-Parties Conference, and a Committee appointed by it submitted a report in August 1928 containing proposals for the future Constitution of India. While the Indian nationalists aimed at the immediate establishment of full responsible government both at the Centre and in the Provinces, the proposals of the Statutory Commission were practically limited to the transfer of responsibility in the Provincial sphere, and even that subject to restrictions unacceptable to Indian opinion. Even before the Commission submitted its report it had become clear that some concession on the part of the Government was necessary to rally moderate opinion in its support. With this end in view, on 31 October 1929, Lord Irwin announced the decision of His Majesty's Government to hold a Round Table Conference with the representatives of both British India and the Indian States

[1] pp. 185-90.
[2] p. 192.
[3] pp. 190-2.
[4] p. 198.
[5] pp. 185-90, footnotes.
[6] p. 12.
[7] p. 205.
[8] pp. 207-9.
[9] p. 209.
[10] pp. 210-13.

after the receipt of the Commission's report. The object of the Conference was stated to be to find an acceptable solution to the British Indian side of the problem and also to work out the course of the future relationship between British India and the Indian States.[1] Lord Irwin sought to satisfy public opinion on another point that had been agitating the public mind. The announcement of 1917 had stated, and the Preamble to the Government of India Act, 1919, had laid down 'responsible government as an integral part of the British Empire' to be the goal of India's constitutional development. It had been generally taken to mean a status similar to that enjoyed by the self-governing Dominions of the Empire. But, on 8 February 1924, speaking on a resolution on constitutional reforms, Sir Malcolm Hailey, Home Secretary of the Government of India, stated that the objective of the India Act was not full Dominion status but responsible government. He did not deny that the former might be a corollary to the latter. But for the present the objective was responsible government only.[2] This was regarded by Indian opinion as a virtual repudiation of the high promises held out in the announcement of 1917. While announcing the decision to hold a Round Table Conference, Lord Irwin set at rest this controversy by stating on behalf of His Majesty's Government 'that in their judgement it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status'.[3]

These announcements by Lord Irwin succeeded in winning over the moderate and right-wing elements that had refused to co-operate with the Statutory Commission, but failed to appeal to the Congress and other leftist groups. The Congress wanted an immediate establishment of full responsible government, both at the Centre and in the Provinces, and it was not willing to take part in the proposed Conference unless this basic demand was conceded at the outset. Since Lord Irwin's declaration was a virtual rejection of this demand, Congress passed, on 31 December 1929, the well-known resolution on complete independence[4] and in April 1930 launched a civil disobedience movement under the leadership of Gandhiji.

It was in this atmosphere of bitterness and non-co-operation that, on 12 November 1930, the first session of the Indian Round Table Conference was inaugurated by the King Emperor. It was attended by representatives from the three British political parties, the rulers of the Indian States, and the different parties and interests of British India except the Congress. The membership of the Conference was clearly defective, since the people of the Indian States, and the Congress, which had the largest following in the country, were unrepresented. In spite of this limitation certain positive results were achieved at this session, perhaps largely because the Labour Party, headed by Ramsay MacDonald, was in power at the time. On the very first day of the deliberations the Maharaja of Bikaner declared that the Indian States would be glad to join the British Indian Provinces to form an all-India federation and he was supported in this view by the representatives of other States.[5]

[1] p. 220.
[2] pp. 220-1.
[3] pp. 226-7.
[4] p. 227.
[5] pp. 744-54.

This was an important step forward. Further, if the Indian States were to federate, it would only be on the basis of a responsible government at the Centre, and there was to be a substantial concession in this direction also. The Conference was immediately seized with both the issues. After the details were thrashed out by the numerous committees of the Conference, in his concluding address of the session on 19 January 1931, Ramsay MacDonald announced that His Majesty's Government was in agreement with the view that the Government at the Centre should be a federation, comprising both the Indian States and the British Indian Provinces, and to such a federation it was willing to transfer power, except in respect of Defence and External Affairs, which would continue to be administered by the Governor-General. There was to be full transfer of power in the Provinces. Both at the Centre and in the Provinces, the Governor-General and the Governors were to be vested with special powers for the maintenance of peace and tranquillity, for the fulfilment of the obligations incurred under the authority of the Secretary of State for India in respect of the public services, etc., for the maintenance unimpaired of the financial stability and credit of India, and for the protection of the minorities.[1]

The above declaration was very much in advance of what the Indian Statutory Commission was prepared to recommend only a few months before. The prospects of an understanding with the Congress became bright, and through the good offices of Sir Tej Bahadur Sapru and M. R. Jayakar, the Gandhi-Irwin Agreement of 5 March 1931 was concluded. The Congress agreed to discontinue the civil disobedience movement and to participate in the proceedings of the Conference. And the Government, on its part, accepted as a basic principle that any reservation or safeguard in the transfer of power should be 'in the interests of India'.[2] The Congress appointed Gandhiji as its chief spokesman at the Conference, and the Congress delegation was directed to work for the achievement of Purna Swaraj 'in particular, so as to give the nation control over the defence forces, external affairs, finance and fiscal and economic policy, and to have a scrutiny, by an impartial tribunal, of the financial transactions of the British Government in India and to examine and assess the obligations to be undertaken by India or England, and the right to either party to end the partnership at will; provided, however, that the Congress delegation will be free to accept such adjustments as may be demonstrably necessary in the interest of India'.[3] But this understanding was destined to be short lived. The Labour Cabinet, under whose directions the agreement had been reached, fell from power on 24 August 1931, and was succeeded by a Coalition Cabinet, headed by Ramsay MacDonald, but dominated by the Conservatives. There was, as a result, a marked stiffening in the attitude of the British Government. The second session of the Conference commenced its sittings in September 1931, and was attended by Gandhiji and a few other Congressmen. Gandhiji felt that the spirit of his agreement with Lord Irwin did not pervade the atmosphere of the Conference. His view was that the Congress did not receive the recognition that was its due as the vanguard of

[1] pp. 229-32.
[2] p. 232.
[3] ibid.

Indian nationalism, commanding the largest support in the country, and in a position to deliver the goods, but was being treated ' as one of the parties ' ; an undue stress was being laid on the communal problem, and the minorities and vested interests encouraged in their intransigence, and the reservations and safeguards that were being proposed and discussed, and the general pattern the constitutional proposals were taking, threatened to make the proposed transfer of power to Indians totally unreal. Gandhiji recorded his protest against these developments,[1] and the session came to an end on 1 December 1931 in an atmosphere of bitterness and anxiety. The civil disobedience movement commenced again in India. The parties that had co-operated with the Government at the first session of the Conference continued their policy of co-operation, and the third session of the Conference was held in November-December 1932. Finally, a Joint Parliamentary Committee, with which 21 delegates from British India and the Indian States were associated as assessors, was constituted and submitted its report in November 1934.[2] The Government of India Bill, based on its recommendations, was passed into law and received Royal assent on 2 August 1935.[3]

So far we have considered the question of the growing demand for a revision of the Constitution as established in 1919 and the forging of the Government of India Act, 1935. We shall now consider the communal question which was inextricably linked with the subject of the revision of the Constitution. The Lucknow Pact between the Congress and the Muslim League concluded in 1916 and the alliance between the Hindus and the Muslims over the Khilaphat question secured communal amity for a time. But as the time for a revision of the Constitution came nearer, the relationship underwent a rapid change and each community began to fight for what it regarded its legitimate interests. The policy of the British Government was naturally to win over to its side the minority communities and vested interests in an attempt to stem the growing tide of nationalism, while the Congress, as the premier non-communal organization of the country and the vanguard of the nationalist movement, was anxious to bring about an agreement between the different communities without external aid, so that the nation could present a united front to the British Government in its fight for independence. Although the bona fides of the Congress was often questioned, and it was often charged with being essentially a Caste Hindu organization, attempting to further its communal aims under the cloak of nationalism, the impartial student cannot fail to be impressed by its continuous endeavour to present the ' national ' as opposed to the ' communal ' point of view in the solution of the communal problem.

An idea of the safeguards sought by the minority communities can be had from two documents: (1) Jinnah's Fourteen Points put forward on 28 March 1929 ;[4] and (2) the memorandum jointly put forward by the spokesmen of the Muslims, the Depressed Classes, the Indian Christians,

[1] pp. 233-6.
[2] pp. 270-309.
[3] pp. 323-76.
[4] p. 245.

the Anglo-Indians and the Europeans for consideration by the Minorities Sub-Committee of the second session of the Indian Round Table Conference in 1932.[1]

The communities that had hitherto enjoyed separate electorates and weighted representation demanded their continuance, and the Depressed Classes, who had hitherto voted in joint electorates and not enjoyed any special privileges, asked for similar protection. There was also a demand for the adequate representation of the communities in the Ministries. In addition, the Muslims put forth a number of other demands : reservation of one-third of the seats in the Central Legislature ; greater autonomy for the Provinces, with residuary powers ; introduction of reforms on the same lines as in the other Provinces in Baluchistan and the North-West Frontier Province ; the constitution of Sind, wherein Muslims were in a majority, into a separate Province ; the Muslims of the Punjab and Bengal, whose population ratio was 55·2 per cent and 54·6 per cent respectively,[2] to be assured a majority of the seats in the Legislatures ; and three-fourths of the members of any community to have the right of veto over any Bill or resolution which they considered as injurious to their interests. The All-India Hindu Mahasabha, representing the communal viewpoint of the majority community, was opposed to most of these demands. The Congress made many unsuccessful attempts to bring about an agreement, and of these may be mentioned their resolution on the Political, Religious and Other Rights of Minorities, 28 December 1927,[3] the proposals of the Nehru Committee, as adopted by the All-Parties National Convention, December 1928-January 1929,[4] and the memorandum, dated 28 October 1931, circulated by Gandhiji to the members of the Minorities Sub-Committee of the second session of the Indian Round Table Conference.[5] At this time the main hurdle in the way of an understanding was the question of representation. If separate communal electorates were found 'to perpetuate political divisions on purely communal lines'[6] and give an unhealthy turn to public life, the principle of weighted representation to the minorities introduced by the Lucknow Pact of 1916 made the communal problem a veritable Chinese puzzle, especially in Bengal and the Punjab. The Congress broke away from the policy of the Lucknow Pact and advocated joint electorates as a basis for the future Constitution of India. To secure the protection of minorities it proposed reservation of seats on the basis of population with the right to contest additional seats.

In the absence of an agreement among the communities, and with a view to breaking the deadlock and completing the constitutional arrangements, the British Government, on 16 August 1932, announced its firm and final decision on the subject.[7] The Communal Award, as it came to be generally known, followed the traditional policy of separate electorates and weightage to minorities, and it was heavily tilted in favour

[1] p. 252.
[2] 1921 Census.
[3] p. 241.
[4] p. 243.
[5] p. 251.
[6] p. 248.
[7] p. 261.

of the minorities. It was challenged and amended successfully only in one respect. When he attended the Round Table Conference, Gandhiji had strongly opposed the proposal to introduce separate electorates for the Depressed Classes as it was likely to create a permanent division among the Hindus, and he had warned that he would resist such an attempt with his life.[1] He now started a fast unto death. This led to a compromise between Dr Ambedkar, the Depressed Class leader, who advocated separate electorates, and the others who were opposed to the system. The agreement, which is generally known as the Poona Pact,[2] was accepted and implemented by the British Government as part of the Award, although the Joint Committee on Indian Constitutional Reform felt that the original provisions ' constituted a more equitable settlement of the general communal question and one which was more advantageous to the Depressed Classes themselves in their present stage of development '.[3]

Apart from the conflict in respect of the Depressed Classes, the Communal Award exacerbated communal feelings rather than calmed them. The communities that benefited from the Award, especially the Muslims, were solidly ranged in support of it. The Caste Hindus, led by the All-India Hindu Mahasabha, were stoutly opposed to it, especially in Bengal. In view of the clear difference of opinion among the communities on the subject of the Award, the Congress, claiming ' to represent equally all the communities composing the Indian nation ', took the stand that it ' can neither accept nor reject the Communal Award as long as the division of opinion lasts ', and that ' the only way to prevent untoward consequences of the Communal Award is to explore ways and means of arriving at an agreed solution and not by any appeal on this essentially domestic question to the British Government or any other outside authority '.[4] And, in later years, the summoning of a Constituent Assembly came to be considered the best way of finding a just and lasting solution of the communal problem.[5]

Another subject of importance which was agitated during the period was that of the separation of Burma from India. Burmese sentiment was in favour of separation, but there was a widespread belief that the British Government was encouraging and supporting the separationist move ' to perpetuate British domination there so as to make Burma together with Singapore, by reason of the presence of oil and their strategic position, strongholds of imperialism in Asia ',[6] and this gave birth to a strong anti-separationist movement. The Indian Statutory Commission, however, recommended separation and a separate Round Table Conference in respect of Burma was held in January 1932. In the elections held in November 1932 to ascertain the wishes of the people, the Anti-Separationists came out top.[7] But it was clear that they were not opposed to separation ; what they were afraid of was the possibility of the perpetuation of British domination if they were separated from

[1] p. 259.
[2] p. 265.
[3] p. 270.
[4] p. 267.
[5] p. 477.
[6] Resolution of the All-India Congress Committee, 27-8 March 1931. P. 309.
[7] p. 310, footnote 2.

India without the clear promise of self-government for Burma. The British Government decided on the separation of Burma from India, and this was effected by the Government of India Act, 1935.

Coming now to the main features of the Government of India Act, 1935, in the Provincial sphere, Burma was separated from India and two new Provinces, Orissa and Sind, for the formation of which there was a long-standing demand, were created. In view of the federal form of government envisaged at the Centre, the Provinces were endowed for the first time with a legal personality. Dyarchy was abolished, and all the Provincial subjects were transferred to popular control. Certain 'special responsibilities' were, however, laid upon the Governors as before in respect of the protection of the legitimate interests of minorities, etc., and adequate powers, legislative and administrative, were vested in them for their proper discharge. Bicameral Legislatures were established in Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, and the other Provinces continued to have only unicameral Legislatures. The official blocs vanished, and the nomination of persons to represent backward classes and other interests ceased. There was no change in principle in the allocation of seats among the different communities and special interests, the Communal Award, as modified by the Poona Pact, regulating the distribution of seats among the former. Property qualifications continued to be the main basis for enfranchisement, a very much higher standard being adopted for the Upper Houses. Franchise for the Lower Houses was fixed at a much lower level than before, and this resulted in more than a four-fold increase in the number of voters.

As regards the Centre, the Federation of India was to be inaugurated only after Rulers representing not less than half the aggregate population of the Indian States and entitled to one-half of the seats allotted to them collectively in the Federal Upper Chamber had executed Instruments of Accession. The Units were not federating in respect of a common list of subjects as under other federal systems. The British Indian Provinces, with their tradition of a strong unified Centre, were desirous of having a larger number of subjects in common than the Princes. In their case federal jurisdiction was to extend over all the 59 subjects included in the Federal Legislative List and the Concurrent Legislative List in respect of which both the Federation and the Provinces had jurisdiction. The Princes, on the other hand, were expected generally to federate only in respect of the first 45 items of the Federal List. As it was expected that certain adjustments and allowances would have to be made to suit the needs of particular States, the extent of federal jurisdiction was also likely to vary from State to State. Similarly there were variations between the States and the Provinces in respect of the fiscal arrangements and also in the manner in which the administrative authority of the Federation was to be exercised.

As the country was considered to be not yet ready for the transfer of full responsibility at the Centre, a dyarchic executive was provided for, although the system had been discredited in the Provinces. The Governor-General, assisted by 'Counsellors', not exceeding three in number, was to be in sole charge of the following: (1) Defence; (2) Ecclesiastical Affairs; (3) External Affairs, excepting relations

between the Federation and any part of His Majesty's Dominions ; and (4) Tribal Areas. He was to be responsible in respect of them to the British Parliament. As regards the remaining subjects, he was to be aided by a Council of Ministers, responsible to the Federal Legislature. In the Transferred sphere he was expected to act normally as a constitutional head. But the authority of the Ministers suffered from certain important limitations. The creation of the Reserve Bank and the Federal Railway Authority, with autonomous powers and statutory privileges ; the special responsibilities of the Governor-General in respect of the protection of minorities, etc., with powers to overrule the Ministers, detailed in §12 of the Act ; and the provisions in respect of commercial discrimination and such other matters, all limited the scope of the Ministers' discretion.

The Federal Legislature was to be bicameral. The Indian States were allotted 40 per cent of the seats in the Council of State (the Upper House) and $33\frac{1}{3}$ per cent of the seats in the Federal Assembly (the Lower House). The allocation of seats among the States in respect of the Council of State was based on the relative rank and importance of the States as indicated by Dynastic Salutes and other factors ; in respect of the Assembly, it was based mainly on population. Only a few States were large enough to be entitled to individual representation. The others were formed into groups, and they were to return representatives either by rotation or jointly, as laid down in the Act. The procedure for the selection of the members for the States' seats was left to the Ruler or Rulers concerned to determine, but it was hoped that a system of popular election would be introduced. As regards British India, the allocation of seats among the Provinces in respect of both Houses was mainly on the basis of population. The representation of the communal and special interests proceeded on familiar lines, the Muslims being given $33\frac{1}{3}$ per cent of the British Indian seats in both the Houses. It was hoped that a convention would develop to the satisfaction of the different communities respecting the composition of the States' members in the Legislature. One curious feature of the arrangements was that the British Indian members of the *Upper House* were to be returned, in general, by direct election through territorial constituencies, while those of the *Lower House* were to be returned by indirect election through electoral colleges composed of the members of the Lower Houses of the Provincial Legislatures.

The Act provided for the establishment of a Federal Court to adjudicate inter-State disputes and matters concerning the interpretation of the Constitution Act, with provisions for appeal to the Privy Council.

The Council of the Secretary of State for India was to be abolished and its place taken by a body of 'Advisers', not less than 3 and not more than 6 in number. The Secretary of State for India continued to be responsible to Parliament for the conduct of the Governor-General and the Governors in respect of all matters that were not transferred to popular control.

It was envisaged that some time would elapse before the negotiations for the establishment of the Federation could be completed. The provisions in respect of Provincial Autonomy were to come into force immediately, and so also the provisions in respect of the Federal Court,

the Federal Public Service Commission, and the Federal Railway Authority. As regards other matters relating to the Centre, the provisions of the Act of 1919 were to continue in force till such time as the Federation was established.

The Working of Government, 1937-47

The reforms of 1935, which came into operation in 1937, were destined to pass through a more unhappy course than the reforms of 1919. While nearly all the parties expressed their dissatisfaction with the non-transfer of Defence and External Affairs to Indian hands, the moderate elements, led by men like Tej Bahadur Sapru, M. R. Jayakar and Cowasji Jehangir, wanted the Constitution to be given a fair trial both at the Centre and in the Provinces. But there was stiff opposition, in particular to the federal part of the Act, on the part of the Congress, the Muslim League and the Princes. The first two felt that without control over Defence and External Affairs transfer of power at the Centre was unreal, and even in respect of what remained the Governor-General retained extensive powers of control. In the conditions laid down for the admission of the Princes into the Federation they saw a clever attempt to buttress feudal elements to hold in leash progressive and nationalist forces. The Muslim League regarded the Federal Scheme to be 'most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis-à-vis* the Indian States', and the Congress felt that it was 'designed to facilitate and perpetuate the domination and exploitation of the people of India'. While both wanted the position to be reviewed afresh, the Congress put forth the demand that the future Constitution of India should be framed 'by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible'.[1] The Congress had lost faith in the Round Table method in view of the experience of the three Round Table Conferences, wherein parties enjoying little or no popular support but basking under the sunshine of the Imperial power were treated as though they represented significant interests. As for the Princes, the first flush of enthusiasm exhibited by the Maharaja of Bikaner in his speech at the Round Table Conference in 1930[2] soon gave place to a more realistic analysis in terms of gain and loss in power and authority. The negotiations over the drafting of a standard Instrument of Accession dragged on, and it soon became apparent that the Princes as a class found the Federal Scheme as drawn up disappointing.[3] This was the position when World War II broke out, and it was hardly the time to impose an unpopular scheme. On 18 October 1939 Lord Linlithgow announced, on the authority of His Majesty's Government, that the question of revision of the Act would be taken up at the close of the war.[4] This marked the end of the Federal Scheme as envisaged by the Act. The Central Legislature, constituted in 1935 on the basis of the old Act, continued to sit, and the Governor-General in Council continued to be responsible to Parliament

[1] pp. 384-6.
[2] p. 744.
[3] p. 757.
[4] p. 490.

in respect of all matters. While the structure of the Government remained unchanged until 1946, there was an intense struggle outside its framework to bring about fundamental changes, and this aspect of the subject will be considered later.

As regards the working of the reforms in the Provinces, general elections were held early in 1937. The Congress Party obtained clear majorities in Madras, the United Provinces, Bihar, the Central Provinces and Orissa, and nearly half the seats in Bombay. In the North-West Frontier Province and Assam it secured more than one-third of the seats, and formed the largest party. It was at its weakest in Bengal and the Punjab. The victory of the Congress at the polls was indeed stupendous, but it is important to remember that its success was principally in the General (or what were, in effect, Hindu) constituencies. Taking all the Provinces together, it captured 75 per cent of the General seats, 5·3 per cent of the Muslim seats, and 14·3 per cent of the Sikh seats. The low figures in respect of the Muslim seats was perhaps to some extent due to the electoral understanding that appears to have existed between the Congress and the Muslim League. The Congress contested only 58 of the 492 Muslim seats, and of these it secured 26, most of these in the North-West Frontier Province. The Muslim League, the principal all-India organization of the Muslims, was at its strongest in the Hindu-majority Provinces, but had only a limited following in the Muslim-majority Provinces. But its strength was so limited in all the Legislatures that it could not play an effective part in any Province. The Unionist Party, which was predominantly Muslim in composition, came out with a clear majority in the Punjab. In addition to these, there were a number of other minor parties : the Praja Party of Bengal, the United Party of Sind, the Akali and Khalsa National Board of the Punjab, the Justice Party of Madras, etc. In general, the political set-up emerging from the elections was as follows. In all the Hindu-majority Provinces and the North-West Frontier Province, the Congress Party was strong enough to provide stable Ministries and the Unionist Party was in a similar position in the Punjab. But in Bengal and Sind there were too many small groups, and coalitions were unstable.

At the beginning there was some doubt as to whether the Congress would agree to form Ministries and co-operate in the working of the reforms. There was a large section of opinion within its ranks, led by Pandit Jawaharlal Nehru, opposed to the acceptance of office. A resolution in favour of forming Ministries was, however, finally passed on 18 March 1937, ' provided the Ministerships shall not be accepted unless the leader of the Congress Party in the Legislature is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of Ministers *in regard to constitutional activities* '.[1] This was interpreted by the Governors as an attempt to abrogate the system of safeguards provided in the Constitution and they refused to give the undertaking asked for. Gandhiji, who was ' the sole author of the office-acceptance clause ', contended that he had no intention of making a demand which would mean ' any slightest abrogation of the Constitution ', and all that he sought was ' a gentlemanly understanding between Governors and their Congress Ministers that they

[1] p. 392. Italics by Editor.

would not exercise their special powers of interference *so long as Ministers acted within the Constitution*'.[1] This statement provided a basis for a *rapprochement*, and Lord Linlithgow publicly expressed the view that there is 'no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a Province outside the limited range of the responsibilities specially confined to him', and given the goodwill, 'conflicts need not in a normal situation be anticipated'.[2] This had been the view expressed often by Government spokesmen to make the 'safeguards' palatable. Although no categorical assurance had been given, the Congress Working Committee felt that in the whole context of the circumstances under which Lord Linlithgow's statement was made it would not be easy for the Governors to use their special powers.[3] Accordingly Congress Ministries were formed in July 1937 in all the Hindu-majority Provinces, except Assam, and in the Muslim-majority Province of the North-West Frontier Province. In March 1938 the Congress was able to form a coalition Ministry in Assam also. Although in Bengal and Sind Congressmen were in a minority and did not directly join any Ministry, they exerted great influence—Fazl-ul-Huq, Chief Minister of Bengal, was able to hold his own to a large extent, and the Ministry of Allah Baksh in Sind held power largely with the support of the Congress Party. Only the Punjab, wherein the Unionist Party was firm in the saddle, was largely outside the Congress pale of influence.

The association of the Congress with the Provincial administrations was destined to be short lived, and for reasons to be given later, its Ministries resigned in all the eight Provinces in October-November 1939. After their resignation, non-Congress Ministries functioned for certain periods in Orissa, Assam and the North-West Frontier Province, and in the other Provinces the Governors took the administrations into their own hands, and popular Governments were not restored until after the War.

During the period Congress Ministries were in power, their relations with the Governors were remarkably smooth. On only one occasion, in February 1938, a serious conflict arose over the issue of the release of political prisoners in Bihar and the United Provinces, but the crisis was tided over by the tact and spirit of accommodation evinced both by Lord Linlithgow and the Congress High Command.[4] In Bengal and Sind, the coalition Ministries were weak and unstable, and the Governors of these Provinces played an important role. During the war years, in the Provinces with Ministerial Governments, the Governors appear to have made great encroachments into the field of the Ministers, and this trend was inevitable at a time when the British Government was straining every nerve to step up the war effort in the face of widespread popular opposition.[5]

In the discussions bearing on the working of the Constitution during the period, one aspect of the working of Provincial Autonomy drew a lot of public attention. The Working Committee of the Congress formed

[1] p. 393. Italics by Editor.
[2] p. 395.
[3] pp. 396-7.
[4] pp. 397-404.
[5] pp. 404-7.

in March 1937 a Parliamentary Sub-Committee consisting of Maulana Abul Kalam Azad, Dr Rajendra Prasad and Sardar Vallabhbhai Patel. It was ' to be in close and constant touch with the work of the Congress Parties in all the Legislatures in the Provinces, to advise them in all their activities, and to take necessary action in any case of emergency '.[1] The activities of the Sub-Committee were directed towards national development on broadly uniform lines and the maintenance of strict discipline within the ranks of the Party, and its control was quite extensive and substantial. There was a similar trend within the ranks of the Muslim League, which became pronounced in later years when the League gained in following and organizational strength. From the constitutional angle, it had no doubt the effect of weakening Provincial Autonomy and undermining the federal principle on which the Act of 1935 was based. The growth of parties on national lines and domination of local by national politics, however, are the common features of many other federal systems such as in Canada, Australia and the United States of America, and there was nothing totalitarian in this trend, as was alleged by certain critics. Such a trend was inevitable in India, wherein the parties had developed purely on national lines and the whole background of constitutional and administrative development had been so far unitary. Further, the need for presenting a united front in the fight for independence and a similar need felt by the minorities, in particular the Muslims, to present a common front to safeguard their interests, made development of parties on Provincial lines difficult.

Towards Partition

We may now consider the effect of the reforms on the communal situation. We have seen how opinion was sharply divided over the Communal Award, and the Congress took the stand that a fresh solution, acceptable to all the parties, should be found. Prior to the elections of 1937 the relations between the Congress and the Muslim League had been increasingly cordial. The Congress regarded the League to be the most influential of the Muslim organizations not associated with it, and the League pursued a policy similar to that of the Congress, except over the communal issue. During the elections, there was something of a concordat between the two in many places to avoid three-corner contests. As has been described, the Congress came out with colours flying, but the League did not fare well. The League made a surprisingly poor impression in the Muslim-majority Provinces ; neither the bulk of the Muslim members nor the Muslim Chief Ministers of these Provinces were its members. As the elections revealed, its strength lay mostly in the Hindu-majority Provinces. But, in these Provinces, its numerical strength in the Legislature was bound to be limited as its activities were confined to the Muslims only : in the United Provinces where it was at its strongest it held 11·4 per cent of the seats in the Lower House.

After the elections, when Ministries came to be formed, the question arose as to how the representation of the minorities should be secured. According to the Instrument of Instructions issued to him, each Governor was required to ensure that his Ministry included ' so far as practicable

[1] R. Coupland, *Indian Politics*, vol. II, p. 98.

members of important minority communities', but he was to bear, at the same time, 'constantly in mind the need for fostering a sense of joint responsibility among his Ministers'.[1] Neither the terms nor the spirit of the Instructions made it obligatory that the persons chosen should command the confidence of the members of the communities in the Legislature. Indeed, such a provision would have struck at the root of the principle of joint responsibility of Ministers. Prior to 1937 no great stress was laid on this point by the minorities. Even the Minorities Memorandum of 1931 merely provided: 'In the formation of Cabinets in the Central Government and Provincial Governments, so far as possible, members belonging to the Mussulman community and other minorities of considerable number shall be included by convention.'[2] Because of its sweeping success at the polls, the Congress was in a position to form *purely* Congress Ministries in all the Hindu-majority Provinces excepting Assam, and also in the Muslim-majority Province of the North-West Frontier Province. Although it had failed to make headway in the constituencies of the minority communities it had within its own ranks a sprinkling of persons belonging to these communities, and they were included in the Ministries, and where this was not possible Independents or persons belonging to other parties were induced to join the Congress by the offer of Ministerial posts. Both the letter and the spirit of the Constitution were satisfied.

The formation of *purely* Congress Ministries appeared to the Congress to be the best under the circumstances from many points of view. The inclusion of the representatives of the Muslim League and other communal parties would have adversely affected the spirit of joint responsibility among the Ministers, and also weakened the national front, which had to be maintained at its optimum strength to achieve independence. Preference shown in the selection of Ministers to persons who clung to communal politics as against those who had thrown in their lot with the Congress would have had a disheartening effect on the latter and the fight against communalism would have received a severe setback. A firm refusal to share power with the communal parties would have avoided this danger, but also have served as a warning to the latter that with communal politics they would be eternally doomed to occupy opposition benches, and that their salvation lay in coming out of their communal shells. The Congress, particularly in view of the poor record of the Muslim League and other communal parties at the recent elections, felt that it had underestimated its own strength in the past, and had 'too long thought in terms of pacts and compromises between communal leaders and neglected the people behind them'.[3] Although it had met with serious reverses in the Muslim constituencies, the elections showed that Muslims were increasingly turning towards it, its success in the North-West Frontier Province being particularly heartening. The time, indeed, was opportune to start an intensive mass-contact movement among the Muslims.

The Muslim League and other communal parties had never met a more dangerous challenge. What was at stake was not merely the

[1] p. 379.
[2] p. 253.
[3] p. 422.

temporary question of a few seats in the Ministries. Their whole future as political parties was in jeopardy. The logic of the system of separate electorates required not a parliamentary system of responsible government, but a composite Government 'representative' of the different communities in the Legislature. Even with such a Government there were to be special safeguards to prevent measures affecting the vital interests of the minority communities being passed without the assent of the representatives of those communities. Without these safeguards communal parties representing minorities could not continue to function for long. While this was true of all such parties, only the Muslims and the Sikhs were in a position to put up an effective fight. The Muslim League, which was the premier all-India organization of the Muslims, took up the challenge. In view of the weaknesses revealed in the last elections it had first to secure the solid backing of the Muslim masses in all the Provinces to the same extent as the Congress had obtained of the Hindus and also develop a well-disciplined militant party structure.

To achieve this, in the Provinces in which the Congress Governments were functioning, a bogey of 'atrocities' against Muslims was raised and steadily maintained by the League: the use of the national flag, the singing of *Bande Mataram*, permitting music before mosques, the prevention of cow slaughter and the use of Urdu, the adoption of the *Vidya Mandir* scheme, etc., figured largely among the 'atrocities'. A number of Inquiry Committees were appointed, and they put out highly inflammatory and tendentious reports.[1] And, when the Congress Ministries resigned in October 1939 on the War issue, the Muslim League celebrated 22 December 1939 'as the "Day of Deliverance" from tyranny, oppression and injustice during the last two and a half years'.[2] It is clear that the story of the Congress 'atrocities' was fabricated for propaganda purposes, and the charges were grossly coloured and exaggerated. An observer who cannot be accused of partiality towards the Congress, Reginald Coupland, has observed: 'The Congress Governments as a whole wanted to be just to the minorities', for 'the Congress leaders . . . had repeatedly insisted on the non-communal character of the Congress, and they were bound to try to prove that communal neutrality was not an exclusively British virtue'.[3] The Congress was fighting a losing battle in this propaganda war, and the League, by playing deftly on their passions and prejudices, soon gained a firm hold on the Muslim masses.

To this essentially negative approach was soon added a positive one. Muslims, it was claimed, were not a minority but a nation, and they were entitled to set up their own State, sovereign and autonomous, in the North-Western and Eastern zones of India.[4] Was this move part of the game of party politics or was it based on a genuine passion on the part of the Indian Muslims for a separate homeland? Was there room for compromise or would the struggle end only with the realization of the objective set forth? The answer was, perhaps, never clear until the end. Whatever the thoughts and feelings of those who initiated the move were,

[1] p. 410.
[2] p. 420.
[3] R. Coupland, *Indian Politics*, vol. II, p. 188.
[4] Pakistan Resolution of the All-India Muslim League, 22-4 March 1940. P. 443.

Muslim India was swept off its feet. The gospel of Pakistan spread rapidly and took firm root among the politically conscious Muslims, both in areas wherein Muslims were in a majority and could naturally be expected to form part of Pakistan and also in areas wherein they were in a hopeless minority and were likely to be the first victims of strained communal relationship. This revolutionary development changed the whole set-up of the communal problem. The issues for consideration no longer centred round joint electorates *v.* separate electorates, weightage, weak *v.* strong Centre, etc. The principal question now was how much of the political unity fostered by nearly 200 years of British rule could be preserved, and what alternatives to outright partition could be thought of. A number of schemes based on the confederal principle, with a Centre handling a minimum of subjects such as Defence and External Affairs, were drawn up by different Muslim leaders. Dr Syed Abdul Latif, an ex-professor of the Osmania University at Hyderabad, expounded his views in *The Cultural Future of India* and *A Federation of Cultural Zones for India*, published in 1938, and *The Muslim Problem of India*[1] published in 1939. Sir Muhammad Shah Nawaz Khan of the Punjab put forth a scheme entitled a *Confederacy of India* in 1939 under the nom de plume 'A Punjabi'. Sir Sikandar Hyat-Khan, Chief Minister of the Punjab, outlined his views in *Outlines of a Scheme of Indian Federation*,[2] issued during the same year.

To the charge of 'atrocities' the Congress attempted a detailed explanation to show that their Ministers were not guilty. Sardar Vallabhbhai Patel, Chairman of the Congress Parliamentary Committee, announced that, at his instance, every Congress Premier 'had invited his Governor unhesitatingly to intervene in matters affecting the rights and the interests of the minorities whenever the Governor felt that the action of the Ministry was not correct', and he had been informed that the Governors considered the charges 'unwarranted'.[3] An offer for an inquiry by Sir Maurice Gwyer, Chief Justice of the Federal Court, or some other person of similar status and judicial position, was also made. The League's reply was that the matter was for consideration by the Governor-General as provided in the Constitution, and a Royal Commission should be appointed to investigate the matter.[4]

But this controversy over the alleged 'atrocities' hardly touched the core of the problem. The League was fighting for its political future, which was threatened by the Congress in launching the mass-contact movement among the Muslims and in refusing to share power with it in the formation of the Provincial Cabinets. The basic demands of the League for political understanding were *inter alia* (1) that the League should be recognized to be 'the only authoritative and representative political organization of the Mussulmans of India',[5] (2) that the Congress should accept the Communal Award and cease all opposition to it, and (3) that coalition Ministries should be formed and include a fair share of Muslims who could command the confidence of the Muslim Members

[1] p. 444.
[2] p. 455.
[3] p. 419.
[4] pp. 419 and 433.
[5] Jinnah's letter to Subhas Chandra Bose, 2 August 1938. P. 431.

of the Legislatures. If these demands had been accepted at this stage, the trend towards Pakistan would have been, perhaps, arrested. But such a move would have struck at the root of the Congress ideology, which was to take the country along the path of nationalism as opposed to communalism, and it would also have roused the intense opposition of the Hindus, who formed the core of its membership. The dilemma was, indeed, serious. The Congress-League negotiations of the period reveal a basic difference in approach, and neither party was willing to compromise in what it regarded to be its fundamentals. And perhaps on both sides there was as yet an insufficient appreciation of the length to which the separationist ideas, the seeds of which were just sown, would lead the country.

Towards Independence

At this crucial moment when the communal question was taking a turn for the worse, World War II broke out and brought to the forefront the future of Indo-British relationships. Although the Congress had co-operated in the working of Provincial Autonomy, it had time and again reiterated ' its general and basic policy of non-co-operation with the apparatus of British imperialism in so far as circumstances may require variation '.[1] Now that the war had come, the time was opportune, psychologically and otherwise, to intensify the struggle for freedom. It demanded that India's right to independence should be conceded in unequivocal terms and the people of the country allowed to shape their own future through a duly elected Constituent Assembly without any interference on the part of the British Government. And, for the period of the war, such changes were to be introduced in the governance of the country as would give effect to the basic principle of independence to the largest possible extent, ' for it is the present that will govern action today and give shape to the future '. If these demands were conceded India would ' gladly associate herself with other free nations for mutual defence against aggression and for economic co-operation '.[2] To remove doubts as to its attitude towards armed resistance to Fascist aggression, the Congress made it clear that its basic policy of non-violence in the national struggle for freedom did not extend to the region of national defence.[3] The Muslim League, while endorsing the demand for freedom, asked for an assurance ' that no declaration regarding the question of constitutional advance for India should be made without the consent and approval of the All-India Muslim League, nor any Constitution be framed and finally adopted by His Majesty's Government and the British Parliament without such consent and approval '.[4] And before long, in March 1940, the well-known resolution on Pakistan was passed,[5] and thereafter the policy of the League was to ensure that an independent Pakistan was created at the same time that India got her freedom. The change was clearly set forth in Jinnah's Tentative Proposals of 1 July 1940 offering co-operation ' provided the British Government are ready and willing to associate the Muslim leadership as equal partners in the Government both at

[1] p. 389.
[2] pp. 484-8.
[3] p. 500.
[4] p. 490.
[5] p. 443.

the Centre and in all the Provinces '. On this occasion, and in all his subsequent negotiations with the British Government and the Congress, he advanced three basic demands : (1) the League should be regarded as the *sole* spokesman of Muslim India ; (2) the creation of Pakistan as an independent State should be accepted in principle ; and (3) in any interim Government that was formed the Muslims, represented by the League, should have *equal* representation with the Hindus if the Congress came in, otherwise they should have a majority of the seats, since ' the main burden and the responsibility will be borne by the Mussulmans in that case '.[1]

In the face of these conflicting demands of the Congress and the League, the policy of the British Government did not undergo any basic change until the threat of Japanese invasion assumed serious proportions in 1942. In his first policy statement after the outbreak of war, on 18 October 1939, Lord Linlithgow reiterated that the British Government stood by the policy embodied in the Preamble of the Act of 1919 and by the clarification issued by Lord Irwin in 1929 that the natural issue of India's progress as contemplated therein was the attainment of Dominion Status. The British Government was aware of the dissatisfaction expressed in many quarters with many of the provisions of the Act of 1935, and they were very willing, at the end of the war, ' to enter into consultation with the representatives of the several communities, parties, and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable '. Lord Linlithgow also announced that, with a view to securing the association of Indians with the conduct of the war, a consultative group, representative of all the major political parties in British India and of the Indian Princes, would soon be formed, and there would also be an expansion of the Governor-General's Council.[2] Negotiations proceeded, and in his statement of 8 August 1940 Lord Linlithgow conceded the Congress demand for a Constituent Assembly in an indirect way and with important reservations, but assured the minorities at the same time that His Majesty's Government ' could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of government whose authority is directly denied by large and powerful elements in India's national life '. He also stated that, as announced earlier, a War Advisory Council would be set up, and ' representative Indians ' would be added to the Governor-General's Council.[3]

The Congress viewed these statements as expressing Britain's intention to hold India in bondage indefinitely. In October 1939 the Congress Ministries in all the Provinces resigned, and on 17 October 1940 the ' individual ' civil disobedience movement was started under the leadership of Gandhiji.[4] The Muslim League also found the statements disappointing, and refused its co-operation. Unlike the Congress, however, it did not pursue a policy of civil disobedience, or actively embarrass the Government in any other way during the war period.[5]

[1] p. 502.
[2] pp. 490-3.
[3] pp. 504-5.
[4] p. 505, footnote 2.
[5] p. 508.

After waiting for a time, in spite of the opposition of the two principal parties of the country, the British Government went ahead with its plans. The Governor-General's Council was reconstituted on 21 July 1941 with eight Indians and three Britons, apart from the Governor-General and the Commander-in-Chief, while previously there were three Indians and three Britons. Even the Liberal politicians were not impressed by this measure, since the key portfolios—Defence, Finance, Home and Communications—were still withheld from Indians, and, indeed, by this reform, no portfolio, not hitherto held by Indians, was transferred to them. There was also set up the National Defence Council with 30 members for the purpose of associating Indians in the war effort, and it was composed of such elements as were willing to co-operate with the Government.[1]

The Japanese attack on Pearl Harbour in December 1941 and their rapid march culminating in the invasion of Burma brought the war to India's doors. The British Government felt that the emergency called for an all-out effort to enlist India's support in waging the war, and sent Sir Stafford Cripps, Lord Privy Seal of the War Cabinet, to negotiate a settlement with the Indian leaders. Under the Draft Declaration brought by him, the Congress demand for a Constituent Assembly was conceded, and the freedom with which it could function was emphasized by a recognition of India's right to secede from the Commonwealth, if she so desired. To allay minority fears as to the shape the Constituent Assembly would take, it was provided that after fresh elections at the end of the war the entire membership of the Lower Houses of the Provincial Legislatures would form a single electoral college and proceed to the election of the Constitution-making body by the system of proportional representation. The protagonists of Pakistan were assured that such of the Provinces as were not willing to accept the new Constitution could devise a Constitution of their own, adopting a procedure analogous to the above, and they would be accorded 'the same full status as the Indian Union'. The Princes were assured a similar freedom to accept the new Constitution or not.[2] These proposals, which concerned the future, pleased neither the Congress nor the League. The Working Committee of the Congress observed that while future independence was implicit in the proposals the accompanying provisions and restrictions were such that real freedom might well become an illusion. The rights of the people of the Indian States were wholly ignored and non-representative elements introduced into the Constitution-making body. While the Committee could not think 'in terms of compelling the people of any territorial unit to remain in an Indian Union against their declared and established will', it felt that the prior acceptance of the principle of non-accession by any Province dealt a severe blow to the conception of Indian unity and was certain to lead to attempts at separation at the very inception of the Union.[3] The League, on the other hand, took the stand that there could be no compromise on the question of creating an independent Pakistan. The proposal to establish a single Constitution-making body with the primary object of creating one Indian Union, in

[1] pp. 513-17.
[2] pp. 520-1.
[3] p. 525.

effect relegated Pakistan ' only to the realm of remote possibility '. And, further, the League found it difficult to accept Cripps's views, expressed during the negotiations, on the procedure to be adopted for eliciting public opinion on the Pakistan issue.[1]

In the grave crisis arising out of the Japanese invasion it was the present that mattered more than the future. On this aspect of the question the British Government had not sent clear-cut proposals, and it was for Cripps to negotiate a settlement on the spot. The Congress held that the present emergency could only be met by a truly National Government, with full powers to administer and control *all* subjects, including Defence, for such a Government alone could organize defence, both intensively and on the widest popular basis, and create a mass psychology of resistance to the invader. It made it clear that in making this demand there was no intention to interfere with the technical and operational sides, and it was willing that the higher war strategy should be controlled by the War Cabinet in London, which would have an Indian member on it. If this proposal were accepted it was willing to co-operate in waging the war and shoulder the responsibilities of office, setting aside for the time being the grave objections it had to the long-term proposals. But the offer was unacceptable, and the negotiations broke down principally on the issue of the transfer of Defence to Indian hands.[2] Cripps's firm offer was that all the members of the Governor-General's Council, except the Governor-General himself and the Commander-in-Chief, should be Indians, selected in consultation with the political parties, and all portfolios, except Defence, would be allotted to them. The Council would function within the framework of the existing Constitution ; this meant that it would be responsible to the Secretary of State for India and Parliament and not to the Central Legislature.[3] The Muslim League took the stand that it was unnecessary to express an opinion on this controversy as the long-term proposals were totally unacceptable to it.[4]

The failure of the Cripps Mission came as a bitter disappointment, and the Congress, on 8 August 1942, passed the well-known ' Quit India ' resolution, demanding immediate, complete and unconditional withdrawal by the British, regardless of the consequences.[5] Gandhiji said, ' Leave India in God's hands, in modern parlance, to anarchy, and that anarchy may lead to internecine warfare for a time or to unrestrained dacoities. From these a true India will rise in place of the false one we see.'[6] And to enforce the demand, a mass civil disobedience movement was launched. The Muslim League was opposed to the movement, which it characterized as ' not directed for securing the independence of all the constituent elements in the life of the country, but for the establishment of Hindu *raj* and to deal a death blow to the Muslim goal of Pakistan '.[7] The movement was more intense and widespread than any

[1] p. 526.
[2] pp. 524-6 and 531-6.
[3] pp. 536-7.
[4] p. 528.
[5] p. 541.
[6] E. W. R. Lumby, *The Transfer of Power in India, 1945-47* (London, George Allen & Unwin Ltd, 1954), p. 32.
[7] p. 544.

so far launched by the Congress, but the Government was able to suppress it and maintain its authority.

Until the war in Europe came to an end there was no further attempt on the part of the Government to resolve the political impasse, and an effort made in this direction by Gandhiji received no encouragement.[1] There was, however, considerable activity among the leaders to bring about a Congress-League understanding. Following the failure of the Cripps Mission, C. Rajagopalachari, a top-ranking Congressman, made a proposal that, with a view to securing united national action, the Congress should acknowledge, as a 'lesser evil', the League's claim for separation, if it was persisted in.[2] But this move evoked little response, and he left the Congress to be free to canvass support for his view. Two years later chances of compromise appeared brighter. Rajagopalachari again made a move in July 1944[3] and a correspondence followed between Jinnah and Gandhiji. The latter was willing to concede the claim of the North-Western and Eastern parts of India in which Muslims were in an absolute majority of the population to set up 'two sovereign independent States', provided the proposal was endorsed by a plebiscite of *all* the inhabitants of the concerned regions. There was to be, at the same time, a Treaty of Separation containing terms for safeguarding the rights of minorities, and also provisions 'for the efficient and satisfactory administration of Foreign Affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be matters of common interest between the contracting parties'. On an understanding being reached, the Congress and the League were to chalk out a common course of action for the attainment of independence.[4] The proposals were quite unacceptable to Jinnah. His objections were two-fold. First, he was aiming at incorporating the whole of Bengal and the Punjab in Pakistan, although the Muslims had, in these Provinces, only a narrow overall majority, and were actually in a minority in a number of districts. A plebiscite of *all* the inhabitants would have gone against Pakistan. He therefore demanded that only Muslims should vote at the plebiscite although the decision would be binding on all the communities. Secondly, he wanted a *completely* sovereign Pakistan, with no restriction of any type on its authority.[5] The failure to reach an agreement by the two leaders was due to basic differences in approach. Jinnah proceeded on the basis that the Muslims of India were a separate nation and had a fundamental right to form their own State. Gandhiji, on the other hand, was willing only to endorse 'the concrete suggestion of division of India as between members of the same family . . . reserving for partnership things of common interest'.[6]

Following the failure of these negotiations, the Non-Party Conference, composed mostly of leaders of the liberal school, set up a committee under the chairmanship of Sir Tej Bahadur Sapru to find a solution, and the Committee's report was published in 1945. Although a number of far-reaching concessions were made, its outright rejection of the demand

[1] p. 545.
[2] p. 547.
[3] p. 548.
[4] pp. 549-50.
[5] pp. 550-3.
[6] p. 556.

for Pakistan and the proposal to abolish separate electorates were hardly likely to find favour with the League, and the attempt proved abortive.

When the war came to an end in Europe in May 1945, the political stalemate in India still remained unresolved. In June-July 1945, Lord Wavell, with the sanction of His Majesty's Government, made an attempt to reconstitute his Council, in general on the lines of the short-term proposals of the Cripps offer. The question of India's future, on which there was an irreconcilable cleavage of opinion, was not taken up for consideration. He hoped, as many others did at the time, that if the Congress and the League were persuaded to work in co-operation in an Interim Government for the duration of the war, they would evince greater readiness to compromise when the time came to draw up the future Constitution of the country. The attempt did not succeed, because the League insisted that *all* the Muslim Members of the Council should be its nominees, and the Congress was equally determined that, by implication, it should not be treated as a communal organization, representing only the Hindus.[1] As Sir Stafford Cripps observed, the obvious cause of the breakdown was not so much the constitution of an Interim Government as the influence any temporary arrangement was likely to have upon more permanent decisions which would have to be taken in the near future on the issue of United India *v.* Pakistan.[2]

The war with Japan came to an end unexpectedly on 15 August. Elections that had been postponed so long owing to the war were held in the ensuing cold weather. The results only confirmed what had been apparent during the previous few years, that the Congress and the League were the only parties that really counted, and that in the Punjab the Akali Sikhs held a strategic position. In the Central Assembly the League captured every seat that was reserved for Muslims, and the Congress all the remaining elective seats. In the Provincial Assemblies the Congress obtained an absolute majority in all the Hindu-majority Provinces and in the Muslim-majority Province of the North-West Frontier Province, and it proceeded to form Ministries in all these eight Provinces. The Muslim League captured 428 out of 492 Muslim seats in the Provincial Assemblies. It had failed to obtain an absolute majority in any Province, but was the largest party in the Punjab, Bengal and Sind. It was able to form Ministries in Bengal and Sind, but in the Punjab, a coalition of the Akali Sikhs, the Unionists and the Congress, headed by Malik Khizer Hyat Khan, took office.

Soon after the elections, on 25 March 1946, a special Mission of Cabinet Ministers headed by Lord Pethick Lawrence, the Secretary of State for India, came to India to find a solution to the Indian problem. The activities of the Mission and the events that followed leading to partition and independence should be studied in the background of the Labour Government's firm decision to ' quit ' India at a very early date after making the best possible arrangements for handing over power. Since negotiations with party leaders did not result in an agreed solution, the Cabinet Mission presented on 16 May a scheme of its own, laying down the principles and procedure for the framing of India's Constitution

[1] pp. 560-6.
[2] p. 566.

through a duly elected Constituent Assembly ;[1] and on 16 June a scheme for the formation of an Interim Government at the Centre.[2] The basic form of the Constitution as envisaged was a compromise between the Pakistan and United-India ideologies, and it was as follows :

'(1) There should be a Union of India, embracing both British India and the States, which should deal with the following subjects : Foreign Affairs, Defence, and Communications ; and should have the powers necessary to raise the finances required for the above subjects.

'(2) The Union should have an Executive and a Legislature constituted from British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

'(3) All subjects other than the Union subjects and all presiduary powers should vest in the Provinces.

'(4) The States will retain all subjects and powers other than those ceded to the Union.

'(5) Provinces should be free to form groups with Executives and Legislatures, and each group could determine the Provincial subjects to be taken in common.

'(6) The Constitutions of the Union and of the groups should contain a provision whereby any Province could by a majority vote of its Legislative Assembly call for a reconsideration of the terms of the Constitution after an initial period of ten years and at ten-yearly intervals thereafter.'[3]

To frame a Constitution on these lines a Constituent Assembly was to be set up. The representation of the Provinces was to be on the basis of population, roughly on the basis of one Member to a million, and the seats were divided into three categories—Sikhs, Muslims and General (all except Sikhs and Muslims). Each of the Provincial Assemblies was to form an electoral college, members of each category voting in separate units ; and voting was to be by the method of proportional representation with the single transferable vote. The number of Members allotted to the Indian States was also fixed on the basis of population as stated above, but the mode of choosing representatives was to be settled by consultation. At the preliminary stage they were to be represented by a Negotiating Committee.

After a preliminary meeting of the Constituent Assembly the members were to divide up into three sections : Section A—Madras, Bombay, the United Provinces, Bihar, the Central Provinces and Orissa, which were not claimed for Pakistan ; Section B—Punjab, the North-West Frontier Province, Sind, and British Baluchistan, claimed for Pakistan ; and Section C—Bengal and Assam, claimed for Pakistan. Each Section was then to settle the Constitutions of the Provinces included in it, and also to decide whether there was to be a Group Constitution for those Provinces and if so with what Provincial subjects it should deal. The representatives of the three Sections and the Indian States were then to

[1] p. 577.
[2] p. 602.
[3] p. 580.

meet to draw up the Union Constitution. In the Union Constituent Assembly, resolutions varying the basic form of the Constitution sketched above or raising any major communal issue were to be decided by a majority of the representatives, present and voting, of each of the two major communities. What constituted a major communal issue was to be decided by the Chairman of the Assembly, and if so desired by a majority of either community the question was to be referred to the Federal Court. After the first general election under the new Constitution it was to be open to any Province to come out of any Group in which it was placed by a resolution of its Legislature. Such in brief was the scheme for Constitution-making put forward by the Cabinet Mission.

As regards the setting up of an Interim Government no great difficulty was experienced in reaching an agreement over its powers. Although the Interim Government was expected to function within the framework of the existing Constitution until a new one was framed, the Congress was satisfied with the assurances given in regard to the substantial powers of such an Interim Government.[1] But the main hurdle came to be the League's demand that all the Muslim Members of the Government should be its nominees, and also that the Government should be composed of 12 members—5 representatives of the Congress, 5 of the League, and 2 of the minorities.[2] Failing agreement on the subject among the parties, the Mission announced on 16 June the personnel of the proposed Interim Government, and added that this had been done to get over the present impasse and was not to be taken as a precedent for the solution of any other communal question.[3] There were 14 members—6 Congressmen (5 Caste Hindus and 1 Scheduled Caste), 5 Leaguers, 1 Indian Christian and 1 Parsee.

The future depended on how the Congress and the League reacted to the above proposals. It is clear from the documents that neither was prepared to accept the basic form of the Constitution as drawn up by the Mission in its proper spirit, and each was manœuvring for position to gain the best advantage for its respective ideology. In its resolution of 6 June accepting the Mission's scheme of 16 May, the Council of the All-India Muslim League stated that it was co-operating with the Constitution-making machinery 'inasmuch as the basis and the foundation of Pakistan are inherent in the Mission's plan by virtue of the *compulsory*[4] grouping of the six Muslim Provinces in Sections B and C', and 'in the hope that it would ultimately result in the establishment of a completely sovereign Pakistan'; and it was keeping in view 'the opportunity and right of secession of Provinces or groups from the Union, which have been provided in the Mission's plan by implication'.[5] The League wanted the Union Government, if it was formed at all, to be planned on confederal principles: there was to be no Legislature; there was to be parity between the Pakistan group and the Hindustan group in the Executive, and also in the Legislature, if one was formed; no decision, 'legislative, executive or administrative', on 'any matter of controversial nature'

[1] pp. 606-7.
[2] p. 596.
[3] p. 602.
[4] Italics by Editor.
[5] p. 601.

was to be reached except by a majority of three-fourths ; and revenues were to be raised ' only by contribution and not by taxation '.[1] As regards the Congress, although it formally accepted the Mission's plan, its views were equally uncompromising. It felt, ' taking the proposals as a whole, that there was sufficient scope for enlarging and strengthening the Central authority and for fully ensuring the right of a Province to act according to its choice in regard to grouping, and to give protection to such minorities as might otherwise be placed at a disadvantage '.[2] Although only Foreign Affairs, Defence and Communications had been assigned to it, it believed their scope was wide enough to secure the establishment of a strong, effective Centre. As regards the crucial issue of grouping, it interpreted the Mission's plan to mean that, in the very first instance, before the Sections commenced to function, each of the Provinces was free to decide whether or not to belong to the Section in which it was placed.[3] It also argued, at a later stage, that voting within a Section would not be by simple majority but that the representatives of a Province within a Section would act as a Unit for voting purposes and the Provinces ' had the right to decide both as to grouping and as to their own Constitutions '.[4] If these views had been accepted, the whole groundwork of the Mission's plan would have been torpedoed at the outset, because the Congress had the upper hand in the North-West Frontier Province (Section B) and in Assam (Section C). On this question, Jawaharlal Nehru said at the time, ' The big probability is that, from any approach to the question, there will be no grouping. Obviously, Section A will decide against grouping. Speaking in betting language, there is 4 to 1 chance of the North-West Frontier Province deciding against grouping. Then Group B collapses. It is highly likely that Assam will decide against grouping with Bengal, although I would not like to say what the initial decision may be, since it is evenly balanced. But I can say with every assurance and conviction that there is going to be finally no grouping there, because Assam will not tolerate it under any circumstances whatever. Thus you see this grouping business approached from any point of view does not get on at all.'[5]

It is thus seen that the Mission's plan had failed to bridge the gulf, but there was some faint hope that if the two parties met in the Constituent Assembly they would succeed in ironing out their differences. But this remained unfulfilled because of the differences that arose over the Mission's statement of 16 June respecting the formation of the Interim Government and the developments that followed. The League was known to be firm in its stand that no non-League Muslim should be included in it, and the Congress was equally firm that it should not, by implication, be treated as a communal body. Even a suggestion by the Congress that a Muslim of its choice should be included in the place of a Hindu Congressman on the list was not acceptable to the Viceroy.[6] The Working Committee of the Congress finally turned down the Mission's

[1] p. 587.
[2] p. 611.
[3] p. 592.
[4] p. 660.
[5] p. 613.
[6] p. 607.

proposals of 16 June with the observation, 'In the formation of a Provisional or other Government, Congressmen can never give up the national character of Congress or accept an artificial and unjust parity, or agree to a veto of a communal group.'[1] The League, after being informed of the Congress decision, passed a resolution accepting the proposals, and demanded that the Interim Government should be formed forthwith in co-operation with the League as it alone had accepted both the plans of Mission.[2] The Mission, however, took the stand that this could not be done because both the parties had accepted the 16 May plan for the setting up of a Constitution-making machinery, and they left India at the end of June leaving it to the Governor-General to carry on further negotiations in respect of the Interim Government.[3] On 22 July Lord Wavell wrote to Jinnah making a further proposal : the Interim Government was to be composed of 14 members, 6 nominated by the Congress, including one Scheduled Caste representative, 5 nominated by the League, and 3 representatives of minorities nominated by the Viceroy, including one Sikh. Neither the Congress nor the League was to object to the names submitted by the other party, provided they were acceptable to the Governor-General. There would be no formal condition that major communal issues should be decided by the assent of both the major parties, but the Viceroy would welcome a convention on this line 'if freely offered by the Congress '.[4] Jinnah took the stand that the Mission and the Governor-General were guilty of bad faith in not forming the Interim Government even without the Congress when the latter turned down the proposals of 16 June, and the present proposals went against the League's basic demands which had been accepted earlier. In view of these developments the All-India Muslim League, on 29 July, passed a resolution retracting its acceptance of both the plans and directed Muslims to prepare forthwith for direct action 'to be launched as and when necessary '.[5] Under the terms of the Mission's plan of 16 June the League was now technically ineligible to participate in the Interim Government. The Congress accepted the Viceroy's proposal, and the Interim Government was formed on 2 September without the League participating in it.[6] On this occasion Lord Wavell gave the assurance that the offer he had made earlier was still open, and if the League accepted the scheme the Interim Government would be reconstituted.[7] Further negotiations followed between Jinnah and the Congress, and also with the Viceroy, but no agreement was reached. On reconsideration of the situation the League felt that it would be fatal to Muslim interests to allow the Congress to consolidate its hold at the Centre and it decided to join the Interim Government without imposing any conditions. The Interim Government was reconstituted accordingly in October with both the League and the Congress participating in it.[8]

As regards the progress in Constitution-making, elections were held

[1] p. 611.
[2] pp. 609-10 and 616-17.
[3] pp. 611-12.
[4] pp. 640-1.
[5] pp. 618-21.
[6] p. 643.
[7] p. 643.
[8] pp. 643-55.

in accordance with the procedure laid down in the statement of 16 May, and the Constituent Assembly was summoned to meet for its opening session on 9 December. At the time the League entered the Interim Government in October, Jinnah had promised to summon the League Council with a view to its formally accepting the Mission's statement of 16 May, and it was on this condition that the League had been taken into the Interim Government.[1] But after the Government had been reconstituted, he refused to summon his Council, and, in extenuation, put forward the plea that the Congress had not *really* accepted the scheme as it had chosen to interpret the scheme in its own way on vital points.[2] There was again a stalemate. Negotiations with the leaders of the Congress and the League took place in London, but no agreement was reached.[3] The Cabinet Mission had already made it clear that it was compulsory for the Provinces to enter the Sections in the first instance, and the right to opt out could only be exercised after the first elections under the new Constitution. On 6 December His Majesty's Government came out with a further clarification that voting would be ' by a simple majority vote of the representatives in the Sections ', and that the Congress view that the Provinces had ' the right to decide both as to grouping and as to their own Constitutions ' was unwarranted. If the Congress still entertained doubts, the point was to be referred at a very early date for decision by the Federal Court. But His Majesty's Government made it clear that if a Constitution was framed ' by a Constituent Assembly in which a large section of the Indian population had not been represented ', it could not contemplate ' forcing such a Constitution upon any unwilling parts of the country '.[4] The All-India Congress Committee, meeting on 5 January 1947, decided to accept the interpretation of the British Government, but made it clear that the procedure adopted in the Sections ' must not involve any compulsion of a Province and the rights of the Sikhs in the Punjab should not be jeopardized ', and ' in the event of any attempt at such compulsion, the Province or part of a Province has the right to take such action as may be seemed necessary in order to give effect to the wishes of the people concerned '.[5] For the first time the threat of a partition of the Punjab, Bengal and Assam was held out, a thing to which the League was known to be opposed. The Working Committee of the League, meeting on 31 January, declared that the above resolution was in *mala fides*, because the Congress had undermined the whole basis of the Mission's plan by the conditions it again imposed and the threats it held out, and it demanded that the plan should be declared to have failed and the Constituent Assembly dissolved.[6] In spite of the boycott of the League, the Constituent Assembly met, as scheduled, on 9 December and proceeded with its deliberations.

While these developments were taking place at the constitutional level, the country was heading towards civil war. To mobilize Muslim opinion in its fight for Pakistan the League had called upon Muslims to

[1] p. 654.
[2] pp. 655-7.
[3] pp. 657-9.
[4] p. 660.
[5] *The Indian Annual Register* (1947), vol. I, p. 115.
[6] p. 662.

observe 16 August 1946 as ' Direct Action Day ' throughout the country. The ' Great Calcutta Killing ' that occurred on this occasion was followed by serious disturbances in East Bengal and Bihar, and peace and tranquillity were gravely disturbed at many other centres.

The British Government felt that the situation created by the political deadlock and mounting communal tension bordering on civil war could not be suffered to continue any longer. The existing state of uncertainty was fraught with great danger. A firm decision as to the future was to be reached at once, and the period of transition made as brief as possible. Accordingly, on 20 February 1947, the British Government announced ' their definite intention to take necessary steps to effect the transfer of power to responsible Indian hands by a date not later than June 1948 ', and if by that time a Constitution was not framed in accordance with the proposals contained in the Cabinet Mission's statement of 16 May 1946, it would have to consider ' to whom the powers of the Central Government in British India should be handed over, on the due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people '.[1] As regards the Indian States it was made clear that their powers and obligations under paramountcy would not be transferred to any Government of British India. And the statement also announced the appointment of Viscount Mountbatten, in succession to Viscount Wavell, as Viceroy and Governor-General of India.

If any hope was entertained that the announcement would have the effect of a shock therapy in bringing the Congress and the League nearer to an understanding, it was unfulfilled. The struggle for power became more intense, particularly in the areas in dispute. Relatively the position of the League was weak. Of the Provinces that were to constitute Pakistan, League Ministries were functioning only in Bengal and Sind. The Congress was in power in Assam and the North-West Frontier Province, and there was a coalition of the Congress, the Unionists and the Akalis, headed by Malik Khizer Hyat Khan, in the Punjab. It was a matter of utmost urgency for the League to oust the non-League Ministries in these Provinces and capture power. Towards the end of January 1947, it launched a mass civil disobedience movement in the Punjab and succeeded in forcing Khizer Hyat Khan to resign. But it was in no position to form a Ministry, since both the Hindus and the Sikhs were bitterly opposed to it, and the Province passed under the Governor's rule on 5 March. A similar movement in the North-West Frontier Province failed to dislodge the Congress Ministry, headed by Dr Khan Saheb. In Assam the campaign took the form of an attempt to swell the Muslim population of the Province, and a civil disobedience movement was launched against the Assam Government's policy of evicting squatters, who were mostly Muslims from East Bengal, on the Government's grazing reserves.

Apart from the disturbances resulting from the official policy of the League, there was an unprecedented outbreak of popular violence in the Punjab, and fierce battles were fought to capture different areas of the

[1] p. 668.

Province for Pakistan or Hindustan. The disturbances in the Punjab exacerbated communal relations in the other Provinces, and in this rapidly deteriorating situation June 1948 appeared to be very far off. There were no signs at all of any move for compromise on the basis of a united India. To end the state of suspense and to restore tranquillity, particularly in the border districts, it was considered best to accept what appeared to be the inevitable—the partition of India. There were hurried negotiations between Lord Mountbatten and the party leaders, and the sense of urgency felt all round led to quick decisions, which were embodied in His Majesty's Government's statement of 3 June 1947 and the Indian Independence Act. The final solution was based on the immediate partitioning of the country, the contiguous Muslim-majority areas in the North-West and Eastern parts of India being constituted into the new state of Pakistan. The Congress had to sacrifice its ideal of united India, and the League had to be satisfied with what it termed a 'truncated' Pakistan, i.e. it had to give up its claim to the non-Muslim majority areas in the Punjab, Bengal and Assam. The wishes of the people were formally ascertained on the issue of partition : in Bengal and the Punjab, the members of the Provincial Legislatures were considered representative enough to speak for their constituents ; and in view of the particular circumstances of the North-West Frontier Province, and of the Sylhet District in Assam, plebiscites were held in those places. For the demarcation of the boundary two commissions were appointed, both presided over by Sir Cyril Radcliffe, and their findings were announced on 17 August. A Partition Council was established for the administrative implementation of the policy, and an Arbitral Tribunal, presided over by Sir Patrick Spens, the retiring Chief Justice of India, was set up to adjudicate disputes arising over the division of assets and liabilities. The Constituent Assemblies of Pakistan and India were formally invested with full sovereign powers and entered the comity of nations as free and independent states on 14 and 15 August respectively. On the same day, the rights of paramountcy wielded by the British Crown over the Indian States were declared to have lapsed, and they were advised, in their own interests, to accede to one or the other of the two States that had come into being, which most of them did. The goal set forth in the historic announcement of 1917—'the progressive realization of responsible government in India as an integral part of the British Empire'—was at last reached, though not in the manner nor with the results envisaged at the time.

The Indian States

This discussion has so far centred around constitutional and political developments in British India, and we shall now trace briefly the special problems posed by the Indian States and how they were tackled. There were, it should be noted, over 550 States. Of these, only about a dozen had a population of over a million, and included the well-known States of Hyderabad, Mysore, Travancore and Kashmir. The smaller States varied greatly in size and population ; a large majority of them were just glorified zamindaris, euphemistically called 'States'. They had all one thing in common : they did not form part of British India, and were under the personal rule of Princes with whom the British

Government had entered into political relationships by means of treaties, engagements and *sanads*. The problem of the Indian States had three facets : first, the historic relations of the Princes with the Paramount Power had to be placed on a sound and firm footing ; secondly, the legitimate aspirations of the subjects of these Princes for constitutional Government had to be met ; and lastly these States had to be fitted properly into the general scheme of constitutional development in British India.

The basic approach of the different parties in respect of these issues was as follows. The Princes contended that the British Government as the Paramount Power had, by the free exercise of its political and military might, greatly encroached upon their rights and privileges. They desired that their mutual relations should be regulated in the spirit of the original treaties, engagements and *sanads*, and a mutually acceptable machinery evolved to ensure that paramountcy powers were not exercised arbitrarily. As regards the development of democratic institutions within the States, they laid great stress on the advantages of paternalism and were slow to recognize the changing spirit of the times. On matters of all-India importance in which the Princes had an equal interest with British India, there was no forum, they complained, for ventilating their grievances and seeking appropriate remedies in the way the people of British India had, with the result that the policies and decisions of the Government of India tended to favour the latter. When the time came for the transfer of power to Indians in accordance with the policy laid by the announcement of 1917, they desired that paramountcy rights should not be transferred to any *new* Government, but should be allowed to lapse, leaving them free to enter into any new arrangements they considered proper in the interests of their States. As opposed to these claims, the subjects of the Indian States demanded that the autocratic regimes of the Princes should be replaced by constitutional Governments, and that the Indian States should benefit equally with British India from any reforms introduced at the Centre. The Indian National Congress and other progressive parties of British India were in entire sympathy with the democratic aspirations of the States' peoples, and they were also determined to oppose attempts by the British Government to prolong its hold on India on the specious plea ' of the so-called independence of the States and of their treaties with the Paramount Power, which are sacrosanct and inviolable and apparently must go on for ever and ever '.[1] The policy of the British Government was to maintain unimpaired the paramountcy powers it had acquired by treaties, engagements and *sanads*, and also by usage, but at the same time meet the wishes of the Princes as far as possible. It held that the Paramount Power had no right to interfere in the internal affairs of the States with a view to establishing constitutional Governments, its right to intervene being limited by usage only to cases of serious oppression and misgovernment, and it refused to recognize the States' peoples as an independent entity for purposes of political negotiations. It also held that it had no power to *transfer* any power arising out of paramountcy to the *new* popular Government that it was proposed to establish at the Centre, and the participation

[1] p. 760.

of the Princes in such a Government was to be on the basis of mutual agreement between the parties concerned.

The history of the problem was, in brief, as follows : Montagu and Chelmsford, in their report of 1918, drew attention to the ' uncertainty and uneasiness ' that existed in certain quarters of the Princely world in respect of the nature and extent of paramountcy powers that were being wielded, and observed that the time had come to review the situation, ' not necessarily with a view to any change of policy, but in order to simplify, standardize, and codify the existing practice for the future '. They proposed the appointment of *ad hoc* committees to settle inter-State disputes, including disputes in which the Government of India was a party. They also proposed the formation of a Council of Princes to advise on matters affecting the States generally and other matters affecting the Empire as a whole or British India and the States in common. They envisaged the possibility of joint deliberation between this Council and the Council of State, the upper house of the Central Legislature which it was proposed to constitute, to consider matters concerning India as a whole.[1] The concrete outcome of these recommendations was the establishment of the Chamber of Princes in 1921.[2] On this body 109 Princes had individual representation, and 127 of the lesser Princes had 12 joint representatives. Some of the bigger States declined to join the body, with the result that it could be considered to represent only the medium-sized States. The Chamber was and remained essentially a consultative body until its dissolution in 1947, and it exhibited little vigour or initiative in its activities.

In view of the long-standing complaints of the Princes on the subject of paramountcy and their relations with the Government of India, a committee known as the Indian States Committee, presided over by Sir Harcourt Butler, was appointed and submitted its report in 1929.[3] On the moot question of paramountcy, it rejected the Princes' claim that it was ' a merely contractual relationship ', and held that it was ' a living, growing relationship shaped by circumstances and policy, resting . . . on a mixture of history, theory and modern fact '.[4] It further observed, ' Conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any time raise unexpected situations. Paramountcy must remain paramount ; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States.'[5] With regard to the ' widespread popular demand for change ' within the States, it held that the Paramount Power was ' bound to suggest such measures as would satisfy this demand without eliminating the Prince ', but concluded that ' no such case has yet arisen, or is likely to arise if the Prince's rule is just and efficient ', and if certain reforms were adopted ' in regard to a fixed privy purse, security of tenure in the public services and an independent judiciary '.[6] It accepted, however, the Princes' stand that they should

[1] pp. 707-10.
[2] p. 758.
[3] pp. 715-36.
[4] p. 716.
[5] p. 722.
[6] p. 720.

not be handed over without their agreement to a new Government in British India responsible to an Indian Legislature. As regards matters of common concern between British India and the Indian States, it felt that the time was not yet ripe for an active association of the Princes in the matter or for the consideration of any scheme ' of what may be called, perhaps loosely, of a federal character ',[1] and the Chamber of Princes must for the time being remain consultative. It considered that all ordinary differences of opinion between the States and the Government of India could be satisfactorily resolved if the procedure of *ad hoc* commissions, recommended by the Montagu-Chelmsford Report and accepted by Government, was properly implemented.

The Princes' reaction to the Committee's report was not happy. They expressed disappointment at its recommendations in regard to paramountcy and at its failure ' to provide effective means of securing to the States their rights in matters of common concern to India as a whole '.[2] When the Indian Round Table Conference met at London in 1930, they were well-disposed towards the federal idea as a means of securing an effective voice in matters of common concern, which they could not secure otherwise.[3] But, as discussions proceeded and the implications of federation came to be better appreciated, they came to realize that if they gained, through participation in the Federation, something of the powers that they had lost to the British Government, they had also to surrender to the Federal Government something of their existing powers which they valued.[4] The federal plan as it finally emerged and was embodied in the Government of India Act, 1935, many of them came to feel, meant more loss than gain in power. Perhaps the widespread opposition to the Act in British India and the growing militancy of the Indian National Congress also helped to frighten them off. What the individual reaction of the Princes to the Act was can be known only when the archives of the period are thrown open for study. But it is clear from the speech of the Maharaja Jam Saheb of Nawanagar in 1940 that the general reaction of the Princes was unfavourable,[5] and the scheme, as has been mentioned earlier, was abandoned.

What were the reactions of the subjects of the States to these developments ? Only artificial boundaries separated them from the people of British India. They were subject more or less to the same forces and influences as the latter, and there was a rapid growth of political consciousness among them. As has been mentioned, they wanted the autocratic regimes of the Princes to be replaced by constitutional Governments, and the States were to be represented in the Federal Legislature and the Cabinet by the people's representatives, not by those of the Princes. The Princes showed no inclination to accept either of these claims, and their diplomacy was directed towards safeguarding and strengthening their own powers and privileges, both within and without. This led to an intensification of the struggle by the States' peoples. Each of the States had its own organization for the purpose, and there

[1] p. 725.
[2] p. 737. Also pp. 736-42.
[3] pp. 744-7.
[4] For an idea of what the Princes would have liked to have, see pp. 747-54.
[5] p. 757.

was also the all-India States' Peoples Conference formed with a view to securing united action.

In their fight against the princely order the States' peoples naturally looked to the political organizations of British India for support. In this connexion what mattered most was the policy of the Indian National Congress, which was leading the vanguard of the struggle in British India. At first the Congress avoided antagonizing the Princes and refrained from giving any active support to the democratic movements within the States. In its view the British Government was the principal adversary, and, as far as possible, it was desirable not to weaken the anti-imperialist front by campaigning against vested interests within the country. Moreover, once foreign rule was ended, it would be easy to tackle the problems posed by the princely order. Where the sympathies of the Congress lay was, however, made clear in the well-known Nehru Report of 1928.[1] But this policy had its limitations, which were brought to the forefront by the part played by the Princes in the constitutional discussions leading to the Act of 1935. On this occasion, as mentioned earlier, the Princes showed a marked disinclination to the democratic representation of their States in the Federal Legislature and the Cabinet, without which, the Congress feared, the Federal Government would be a hot-bed of reaction. To secure real democratic government at the Centre it was necessary to establish the rule of the people within these States as well. The Congress came to feel that the fight against the princely order was an essential part of the fight against imperialism and could not be postponed for a future occasion. But, while pledging its sympathy and support, it was of the view that it could not, as an organization, participate in the struggle ; the responsibility and the burden of carrying on the struggle was to be borne by the States' peoples themselves.[2] However, in an important resolution of 1938, it permitted individual Congressmen to participate in the struggle. Although it refrained from direct participation, the democratic movements within the States came to be closely linked with the activities of the Congress, and leading Congressmen, many of whom hailed from the States, took a leading part in the struggle.

The civil disobedience movements launched by the States' peoples did not, however, lead to any fundamental change in the attitude of the Princes. Some measure of progress in the democratic direction was registered in a number of the bigger States such as Mysore, Travancore, Baroda and Hyderabad. Full responsible government was introduced only in one small State, that of Aundh. With the progress of the war, when it became increasingly clear that independence could not be withheld for long, the British Government was agitated more and more by the problem of the States. The bigger States could associate themselves as independent units in any federal scheme. But the question was how to deal with the smaller States, which ran into hundreds. The Government of India proposed that the smaller States should group themselves together, or attach themselves to bigger neighbouring States. The Indian (Attachment of States) Act, 1944,[3] was passed to get over certain

[1] p. 713.
[2] p. 755.
[3] p. 762.

legal difficulties in the way. But the progress made in this direction was very meagre. It was only in 1946, on the eve of the Cabinet Mission's visit to India, that the Princes betrayed in public their realization that the old order could not be maintained intact any more. The speech of the Nawab of Bhopal, Chancellor of the Chamber of Princes, on 18 January 1946, indicated the limits to which the princely order was prepared to go at that time by way of constitutional advancement within the States.[1]

We shall now consider the role of the Princes during the constitutional discussions of the war and the post-war years. During this period the communal issue overshadowed all other issues, but no final decisions on the Indian constitutional problem could be reached without finding a satisfactory solution to the problem of the States. The British Government maintained consistently its attitude that the entry of the Princes into a federal association with the British Indian Provinces should be a *voluntary* act, and the rights of paramountcy could not be transferred to any *new* Government in British India. At the time of the Cripps Mission, the Princes put forward a claim ' that in the event of a number of States not finding it feasible to adhere, the non-adhering States or group of States so desiring should have the right to form a union of their own, with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose '.[2] The British Government did not give any public answer to this demand. Under the Cabinet Mission Plan the Princes were to take their due place in the Constituent Assembly, the details being worked out by a Negotiating Committee. The Mission hoped that ' the Princes' consent to any changes which might emerge as a result of negotiations would not unreasonably be withheld '.[3] But at the same time it made it clear that ' as a logical sequence and in view of the desires expressed to them on behalf of the Indian States ',[4] all the rights surrendered by the States to the Paramount Power would return to them on the establishment of a new fully self-governing Government or Governments in British India. When the Mission's plan failed and it was decided to partition the country, the Indian Independence Act, 1947, laid down that on the scheduled date paramountcy would lapse and the States would become technically and legally independent.

Should the Princes be independent or accede to either of the Dominions ? If they did not contemplate being independent, should they agree to accede immediately, and if so, on what terms ? Or should they wait and see the form the Constitution would take in the hands of the Constituent Assemblies ? And what would happen to the innumerable agreements between the Government of India and the States that governed the administrative relations between the two ? These were some of the questions that the Princes were called upon to answer, and since time was pressing, quick decisions had to be reached. Although the subject affected both Dominions, it was primarily a problem that concerned the future Dominion of India, because the overwhelming majority of the States, by reason of their geographical location, were expected to accede to it. The solution put forward by Lord Mountbatten

[1] p. 764.
[2] p. 762.
[3] p. 768.
[4] p. 769.

and Sardar Vallabhbhai Patel was as follows : The Princes were to enter into a Standstill Agreement[1] with the Dominion of India by which all existing agreements and administrative arrangements would continue in force until new agreements were made ; this agreement would not include the exercise of any paramountcy functions. As regards the question of accession, when the Cabinet Mission had proposed that the States should surrender to the Central Government three subjects, namely, Defence, External Affairs and Communications, the Princes had viewed the proposal as ' reasonable, fair and just '.[2] Taking the stand that this view remained unchanged, it was proposed that the Princes should accede immediately in respect of these subjects, and execute the necessary Instruments of Accession.[3] To allay their fears as to the shape the Constitution might ultimately take, it was expressly provided that by executing the Instruments the Princes were not committed in any way to accepting it.

The reaction of the Princes was various. Hyderabad and Travancore announced that they would become independent sovereign States on the scheduled date. The majority of the members of the Chamber of Princes led by the Nawab of Bhopal wanted to postpone decision on the subject of accession, and did not want to join the Constituent Assembly until the final stage when the Union Constitution came to be drawn up. The minority led by the rulers of Bikaner and Patiala were in favour of immediate accession on the basis of the stated terms. The firm and tactful handling of the situation by Lord Mountbatten and Sardar Vallabhbhai Patel, reinforced by the pressure of public opinion within the States, led nearly all the Princes, including the Rulers of Travancore and Bhopal, to execute Instruments of Accession and Standstill Agreements by 15 August. The notable exceptions were Hyderabad, Kashmir and Junagadh ; these also later acceded to the Dominion of India, but the circumstances under which this happened do not fall within the scope of our study. The accession of most of the States on the basis of the Cabinet Mission Plan and their entry into the Constituent Assemblies of the two Dominions completed the picture. Paramountcy lapsed on 15 August 1947, but it did not lead to a further fragmentation of the country, save as a passing phenomenon, as many had feared. It was now for the representatives of the States assembled with those of British India in the two Dominions to seek a final and enduring solution to the problem of the States.

[1] p. 775.
[2] p. 774.
[3] p. 776.

PART I: THE WORKING OF GOVERNMENT 1921-37

Section A: The Attitude of Political Parties towards the Reforms

I. Resolution thanking Mr Montagu and offering Support in working the new Constitution passed by the Indian National Congress, 1919[1]

This Congress reiterates its declaration of last year that India is fit for full Responsible Government and repudiates all assumptions and assertions to the contrary wherever made.

This Congress adheres to the resolutions passed at the Delhi Congress[2] regarding the Constitutional Reforms and is of opinion that the Reform Act is inadequate, unsatisfactory and disappointing.

This Congress further urges that Parliament should take early steps to establish full Responsible Government in India in accordance with the principle of self-determination.

This Congress trusts that so far as may be possible they will work the Reforms so as to secure an early establishment of full Responsible Government, and this Congress offers its thanks to Mr E. S. Montagu for his labour in connexion with Reforms.

II. Resolution on Non-co-operation and Boycott of the Reformed Councils moved by Gandhiji and passed by the Indian National Congress, 4-9 September 1920[3]

In view of the fact that, in the matter of the events of the April of 1919, both the said Governments have grossly neglected or failed to protect the innocent people of the Punjab and punish officers guilty of unsoldierly and barbarous behaviour towards them, and have exonerated Sir Michael O'Dwyer who proved himself directly responsible for most of the official crimes and callous to the sufferings of the people placed under his administration, and that the debate in the House of Lords betrayed a woeful lack of sympathy with the people of India, and systematic terrorism and frightfulness adopted in the Punjab, and that the latest Viceregal pronouncement is proof of entire absence of repentance in the matters of the Khilaphat and the Punjab,

this Congress is of opinion that there can be no contentment in India without redress of the two aforementioned wrongs, and that the only effectual means to vindicate national honour and to prevent a repetition of similar wrongs in future is the establishment of Swarajya;

this Congress is further of opinion that there is no course left open for the people of India but to approve of and adopt the policy of progressive

[1] P. Sitaramayya, *The History of the Indian National Congress* (Padma Publications Ltd, Bombay, 1946), vol. I, pp. 179-80.

[2] ibid., pp. 157-9. [Ed.]

[3] ibid., pp. 202-3.

non-violent Non-co-operation inaugurated by Mahatma Gandhi, until the said wrongs are righted and Swarajya is established.

And inasmuch as a beginning should be made by the classes who have hitherto moulded and represented public opinion and inasmuch as Government consolidates its power through titles and honours bestowed on the people, through schools controlled by it, its Law Courts and its Legislative Councils, and inasmuch as it is desirable in the prosecution of the movement to take the minimum risk and to call for the least sacrifice compatible with the attainment of the desired object, this Congress earnestly advises,

(*a*) surrender of titles and honorary offices and resignation from nominated seats in Local Bodies ;

(*b*) refusal to attend Government levees, durbars, and other official and semi-official functions held by Government officials, or in their honour ;

(*c*) gradual withdrawal of children from schools and colleges owned, aided or controlled by Government, and, in place of such schools and colleges, the establishment of national schools and colleges in the various Provinces ;

(*d*) gradual boycott of British courts by lawyers and litigants, and the establishment of private arbitration courts by their aid for the settlement of private disputes ;

(*e*) refusal on the part of the military, clerical and labouring classes to offer themselves as recruits for service in Mesopotamia ;

(*f*) withdrawal by candidates of their candidature for election to the Reformed Councils, and refusal on the part of the voters to vote for any candidate who may, despite the Congress advice, offer himself for election ;

(*g*) boycott of foreign goods.

And inasmuch as Non-co-operation has been conceived as a measure of discipline and self-sacrifice without which no nation can make real progress, and inasmuch as an opportunity should be given in the very first stage of Non-co-operation to every man, woman and child for such discipline and self-sacrifice, this Congress advises adoption of Swadeshi in piece-goods on a vast scale, and inasmuch as the existing mills of India with indigenous capital and control do not manufacture sufficient yarn and sufficient cloth for the requirements of the Nation, and are not likely to do so for a long time to come, this Congress advises immediate stimulation of further manufacture on a large scale by means of reviving hand-spinning in every house and hand-weaving on the part of the millions of weavers who have abandoned their ancient and honourable calling for want of encouragement.

III. Manifesto of the Swarajya Party on 'Wrecking the Constitution from within the Reformed Councils', 14 October 1923[1]

The demand to be made by the members of the Party on entering the Legislative Assembly will . . . in effect be that the right of the people

[1] *The Indian Annual Register* (1923), vol. II, pp. 219-20.

of India to control the existing machinery and system of Government shall forthwith be conceded and given effect to by the British Government and the British Parliament. It is no answer to this demand to say that the Government of India has no power under the Act to entertain it. We know it has not and we do not ask it to find some power within the four corners of the Act to deal with it. It has indeed nothing whatever to do with the forms prescribed for resolutions, or other motions, or with the Act itself. We take the position of the Government of India to be precisely what the late Lord Morley said, viz. it was that of an agent of the British Cabinet. The demand will be addressed to the principal through the accredited agent as soon as practicable after the results of the elections are declared and before the legislative session begins, in such manner and form as the elected members of the Party may determine. It will in its nature be an offer of certain terms which it will be for the agent to accept or refuse on behalf of the principal or take such other action thereon as he may be advised.

The attitude of the elected members of the Party in the Assembly and the Councils will depend on the action taken by the Government on the demand formulated by them on the lines indicated above. If the right itself is conceded it will be a matter for negotiation between the Government and the Nationalist members in the Assembly as to the manner in which the right is to be given effect to. But in the event of the Government refusing to entertain the said demand or, after agreeing to do so, offering terms which are not acceptable, it shall be the duty of the members of the Party elected to the Assembly and the Provincial Councils, if they constitute a majority, to resort, in the words of the Party Programme, to a policy of 'uniform, continuous and consistent obstruction with a view to make Government through the Assembly and Councils impossible'. The objection that the Government will not have sufficient time between the date on which demand is made and the opening session of the Legislature to consider it is met by the publication of this manifesto which indicates clearly the essential features of the demand and copies of which are being forwarded to the India Office and the Government of India. There is ample time between now and January 1924 for the Government to be prepared to make up its mind at least as to whether it will dismiss the demand summarily or try to arrive at a settlement. In the former case the course to be adopted by the Party members of the Assembly and the Councils has been clearly indicated above. In the latter it will be easy to arrange the terms and conditions on which the negotiations are to proceed.

IV. Sir Malcolm Hailey, Home Member to the Government of India, on the Appointment of the Reforms Enquiry Committee, 18 February 1924[1]

Before His Majesty's Government are able to consider the question of amending the Constitution, as distinct from such amendments of the Act as are necessary to rectify any administrative imperfections, there must be a full investigation of any defects or difficulties which may have arisen in the transitional Constitution. Neither they nor we would be

[1] *Legislative Assembly Debates* (1924), vol. iv, pt i, p. 765.

justified in considering changes in that Constitution until they were in possession of the information which our investigation would place in their hands. In 1919 Parliament, after the fullest consideration, laid down a scheme, transitional in its nature, but nevertheless carefully devised, with a view to effecting the steps necessary for the progressive realization of the ideal embodied in the prelude to the Act. It is not to be supposed that the British Parliament would be lightly inclined to consider changes in that Constitution; it is bound to concentrate attention for the present on such imperfections in its working as may have been disclosed by the experience of the last three years. I said we have carefully considered our position again, and we hold to that position in detail—save in one respect. If our inquiry into the defects of the working of the Act shows the feasibility and the possibility of any advance within the Act, that is to say, by the use of the rule-making power provided by Parliament under the Statute, we are willing to make recommendations to this effect. But, if our inquiry shows that no advance is possible without amending the Constitution, then the question of advance must be left as an entirely open and separate issue on which Government is in no way committed. To that extent the scope of our inquiry goes somewhat beyond that originally assigned to it; but I must again emphasize the fact that it does not extend beyond that scope to the amendment of the Constitution itself.

V. Policy and Programme of the Swarajya Party as approved by the All-India Swarajya Party Conference, 16-17 August 1924[1]

Whereas by the programme adopted at Allahabad on the 23rd February, 1923, the Party declared that its policy shall include, on the one hand, all such activity as stands to create an atmosphere of resistance making Government by bureaucracy impossible with a view to enforce our national claims and vindicate our national honour, and on the other hand, shall include for the said purpose all steps necessary for the gradual withdrawal of that co-operation by the people of this country without which it is impossible for the bureaucracy to maintain itself;

And whereas the application of the said principle to the existing facts of our national life with special reference to the varying attitude of bureaucratic Government which rules that life demands that such principle must include self-reliance in all activities which make for the healthy growth of the nation, and resistance to the bureaucracy as it impedes our progress towards Swarajya;

And whereas in the light of the experience gained in the Assembly and the different Councils, and in view of the recent developments in the political situation in India, it has become necessary in the best interests of the country to restate the policy and programme of the Party in detail, having regard to the said principle;

Now, the Swarajya Party declares that the guiding principle of the Party is self-reliance in all activities which make for the healthy growth of the nation and resistance to the bureaucracy as it impedes the nation's progress towards Swarajya, and, in giving effect to the said principles,

[1] *The Indian Annual Register* (1924), vol. II, pp. 139-40.

the Party resolves to adopt the following programme, that is to say :

1. Within the Legislative bodies, the Party shall, whenever possible,

(*a*) refuse supplies and throw out Budgets unless and until the system of Government is altered in recognition of our rights or as a matter of settlement between the Parliament and the people of India,

(*b*) throw out all proposals for legislative enactments by which the bureaucracy proposes to consolidate its powers,

(*c*) move resolutions and introduce and support measures and Bills which are necessary for the healthy growth of national life and the consequent displacement of the bureaucracy,

(*d*) help the constructive programme of the Indian National Congress,

(*e*) follow a definite economic policy to prevent the drain of the public wealth from India by checking all activities leading to exploitation and to advance the national, economical, industrial and commercial interests of the country,

(*f*) protect rights of labour, agricultural and industrial, and adjust the relations between landlords and tenants, capitalists and workmen.

2. No member of the Party shall accept any office in the gift of the Government with or without salary or other remuneration.

3. With a view to make the work of the Party effective, it shall be open to its members of the Assembly and various Provincial Councils to seek election to every post and place in the Assembly or the Councils and on their Committees which may be open to them for election.

Provided that no member shall seek election in contravention of any rules framed by the members of the Party in the Assembly or any of the Councils as the case may be.

4. In all other matters members of the Party in the Assembly and the Councils shall be guided by their own rules which shall be submitted for the sanction of the Executive Council as soon after they are framed as convenient, provided that any of the said rules disapproved by the Executive Council shall cease to have effect from the date when such disapproval is communicated to the members concerned.

VI. Manifesto of the Responsivist Co-operation Party, February 1926[1]

(1) We believe that a mass movement of resistance throughout the country is certainly one of the means of enforcing the will of the nation in political matters. But it is the ultimate remedy and we agree, with the Congress, that the country is not at present ready for any measure of this nature.

(2) We believe, however, that an organized individual or group resistance is feasible and may be resorted to as occasion may demand for a particular locality, for definite objects, and for particular occasions.

[1] *The Indian Annual Register* (1926), vol. I, p. 46. The Conference of the Responsivist Co-operation Party was held at Akola on 14-15 February 1926. [Ed.]

(3) We believe that the programme of bringing about constitutional deadlocks, by resorting to a policy of uniform, continuous and consistent obstruction, cannot be successful unless tried on a large scale and backed by some sanction behind the same.

(4) We believe that the best course, under the present circumstances, is that of responsive co-operation, which means working the Reforms, unsatisfactory, disappointing and inadequate as they are, for all they are worth, and using the same for accelerating the grant of full Responsible Government and for creating opportunities for the people for advancing their interests and strengthening their power and for resisting injustice and misrule.

(5) We, however, hereby declare that our working of the Reforms does not imply, in any way, that we give up any position, or surrender any objective, or make any commitment, with regard to the grave defects and inadequacies of the present Government of India Act in general, including the Preamble or Dyarchy in particular.

(6) The policy of working the Reforms necessarily includes the capture of all places of power, responsibility and initiative which are open to election by, or otherwise responsible to, the party within the Legislatures, subject to such conditions, with regard to the policy, programme and other kindred matters, as may seem desirable to impose from time to time.

(7) Our political programme shall be generally on the lines laid down in the manifesto of the Party which in 1920 was started under the name of the Congress Democratic Party, with such changes as may be required under the present circumstances; and, for the purpose of adopting such changes, a Committee is hereby appointed consisting of the following persons, with instructions to submit their report to the Central Council by the end of March in consultation with the leading members of the party all over the country: Messrs M. R. Jayakar, J. Baptista, N. C. Kelkar, M. S. Aney, B. S. Moonje and S. V. Kelkar.

VII. Mr B. Chakravarty, President of the All-India Conference of Responsivists, on the Objects and Policies of the Party, 18 August 1926[1]

The object for which we have met this evening is to decide on a programme for this party and to consider what steps we are to take to contest the forthcoming elections to the Legislative Assembly and the Bengal Legislative Council in the interest of the Responsive Co-operation Party and in the interests of the country.

Without being desirous of forestalling your decision in any way, I beg, Gentlemen, to be allowed to place before you the main idea with which this party has been started in Bengal. This party is, first of all, a party within the Congress: none but members of the Indian National Congress are eligible to become its members. The aim of the party, as of all other parties in this country, is the attainment of Swaraj by peaceful legitimate means. To this creed the Responsive Co-operators whole-heartedly subscribe; and it is their distinctive claim that they recognize no other fetters on their discretion in the choice of means and

[1] *The Indian Annual Register* (1926), vol. II, pp. 37-9.

methods. They do not see the utility or the prudence of limiting their activities by any other dogma. So long as a course of action is likely to bring us nearer to Swaraj and so long as it does not lead us beyond 'peaceful and legitimate' methods, we should not only not hesitate to adopt it—we shall be under a duty to adopt it, if we mean to be true to ourselves and to the best interests of our country.

This is the fundamental doctrine of the Responsive Co-operation Party. In striving for Swaraj we intend to reserve to ourselves the widest liberty of action that the Congress creed permits. So long as we feel that we are keeping up the struggle for Swaraj at as many points as possible and in as vigorous a manner as possible, we shall not be deterred by formulas, conventions, political catchwords, and other forms of verbal jugglery. If the interests of the country call for it, we shall non-co-operate with the Government to the extent of civil disobedience, if necessary. The recent example of Pandit Madan Mohan Malaviya and Dr B. S. Moonje, two of the illustrious leaders of the Party in other Provinces, is already fresh in your minds, and ought to convince you that the Responsive Co-operator does mean business and will utilize every ounce of strength that the nation possesses in order to secure for it the birthright of freedom to which all human beings are by divine law entitled. Again, if the interests of the country demand it, we shall not shrink from the duty of co-operating with the Government, even at the risk of courting ridicule from those who seem to think that Swaraj can be attained by noise and fury, excitement and other stage-effects. Whether misguided politicians and the blind followers they may have gathered round them call us co-operators, moderates or loyalists does not matter in the least. Whether we are serving the true interests of the country, whether we are bringing the day of Swaraj nearer, is the sole consideration for us. If we show ourselves weak in this struggle, if we fail to acquit ourselves as well as we might, if as workers in the country's cause we do not put the utmost pressure on the bureaucracy or if we fail to take advantage of opportunities for progress that offer, we shall have richly earned the condemnation of our countrymen. It is this attitude of fighting for our birthright at every point, with every weapon, and with unremitting devotion, that is the highest conception of nationalism to which we can aspire—the nationalism our great departed leader, Bal Gangadhar Tilak, taught and worked for. For obstruction as such we have no love, because obstruction is not always synonymous with resistance, if we consider the peculiar relationship that subsists between ourselves and our rulers. Obstruction will in fact be mostly futile, often injurious to our interests. But there is a wide range of political activity in which we as a nation can gain in strength only by pitting the whole of that strength against the strength of the bureaucracy; it is in this sphere that obstruction will be useful, that obstruction will be necessary. And I need not point out to you, Gentlemen, that as the past record of the leaders of the Responsive Co-operation Party shows, we shall not shrink from putting up the most stubborn resistance to official autocracy in all its forms that we are at present capable of.

Before I conclude, I shall mention only one other matter; I mean the question of accepting ministerships. If you have followed me so far, you will understand that the only test that we can apply to this question

is the test of the country's welfare. Shall we be helping our country in its march towards freedom ? If we can do so as Ministers, we are under a clear and urgent duty to put forward our best men for ministerial portfolios ; and if we fail to do so, we shall not only be convicting ourselves of moral cowardice, we shall even be betraying the country's interests. But we must at the same time keep in mind the other alternative. The Government may not be disposed to grant to Ministers those facilities that will enable them to work efficiently for the good of the country. In that case it would equally be our clear duty to reject all offers of ministerial portfolios. It is not the pomp and power of a Minister that we covet ; it is the opportunities for national service that might go along with ministerships that we dare not overlook. Inadequate, unsatisfactory and disappointing as the Reforms admittedly are, it would be mere affectation to deny that the work of village reconstruction could never be taken in hand on any adequate scale except with the support of the State exchequer. If we are to drive out malaria and kala-azar from the villages of Bengal, if we are to construct roads, canals, and bridges in rural areas, if we are to clear jungles, sink wells and excavate tanks for the benefit and use of villagers, if we are to make primary education compulsory and vocational education effective, if we are to promote agricultural and industrial development and thus cut at the very roots of the middle-class unemployment that has become the bane of our social life, if we are to do all these things—at least attempt to do them—I ask you, will you prefer to have the work done or the attempt made under the auspices of an I.C.S. official or a Government nominee rather than under the directions of one chosen by you and amenable to you and liable to be removed from office by your vote ? This is an aspect of the question to which I draw your attention and the implications of which I trust you will fully consider.

One more point and I have finished. I feel I have to remind you also of the unhappy state of affairs that has arisen both in this and in other Provinces as a result of the acute communal dissensions which prevail in the country from one end to the other. This unfortunate development has a vital bearing on the question of accepting offices ; and I wish you to ponder over it. Some of you may have heard Mr Jayakar speaking a few days ago at the Albert Institute Hall in this city. He told us [his] experience of what may be called communalized politics in the Bombay Presidency. The Ministers there have been elected on the communal principle and are retained in office on the strength of communal votes. Mr Jayakar who headed the Swarajist bloc in the Bombay Council found himself helpless against a combination of the official and nominated members with the communalist members in the legislature. The result is that even the reactionary measures of the Ministers are supported on communal grounds and the administration of the Transferred Departments is becoming more and more communal in spirit with disastrous results on the general progress of the people. State patronage and other forms of State encouragement are being lent on communal grounds irrespective of all other considerations. I request you to consider whether this is a desirable state of affairs for us to bring about or acquiesce in, and how far there is in our Province a risk of such a development in the near future.

VIII. Mr S. Srinivasa Iyengar, President of the Indian National Congress, on Non-acceptance of Office by the Party, 26 December 1926[1]

Controversy has raged round the question of non-acceptance of office ; but it should be easy to come to a decision upon it, if we kept in view the spirit and objective of our fight against the bureaucracy. In no Province is the Congress Party in the Council in an absolute majority so as to be able to take office and dictate terms to the head of the Government and the Reserved half. To form a Ministry, it will have to coalesce with other groups and to lower its flag and to lose its distinctive character. And any such Ministry if formed can hold office only on sufferance and with the support of the Government and its nominated and official group of votes. On the one hand, it will be indistinguishable in achievement, or rather the lack of it, from a Ministry formed by any non-Congress group of members. If, on the other hand, it attempts to maintain its spirit and carry out its purpose, it must either resign instantly or acquiesce ignominiously in its failure. Again, a strong Minister can only attempt to improve some of the details of administration, but can neither help to change the system of Government nor can effect even material improvements in administration. By improving a detail here and a detail there of administration, he would rather help to perpetuate the existing system of Government by casting his reflected benevolence on the bureaucracy. In reality, no one who has closely followed the achievements of Ministers in the several Provinces can seriously believe that any Ministry can, without a proper system of self-government, get good government for the country.

We should also clearly realize that the power of an opposition, though indirect, is very real and much more effective than the power of Ministers and that if we are disciplined and energetic and in sufficient numbers in any Council we can carry out our policy and programme more easily than the Ministers.

The refusal to accept office till a satisfactory response is made constitutes an amount of political pressure that is necessary and sufficient to induce the Government to come to a settlement. By accepting office, the Congress is bound to become an unconscious ally of the bureaucracy. And, if the most advanced party in the country takes office, where will be the determined and disciplined opposition in each Council to fight against Dyarchy or for Swaraj ? Neither the Ministers nor their party can openly speak and vote against the administration of Reserved subjects. Again, neither the refusal of the Government to release political prisoners and internees nor the rejection of our reasonable demand nor that of our offer of honourable co-operation can be forgotten when we are asked to take office, not as part of a settlement, but as a token of our unconditional surrender. Our self-respect prohibits us from retracing steps when, instead of defeat, victory beckons us to march ahead.

It is said that if we cannot organize forthwith civil disobedience there is no other honest alternative than to own ourselves beaten and accept office. Neither horn of the dilemma exists save in one's imagination. The policy we are pursuing is thoroughly logical and practical and, if persisted

[1] *The Indian Annual Register* (1926), vol. II, pp. 297-8.

in for a while longer, will be crowned with success. After the severest denunciations of the Reform Act on a thousand platforms and the most cogent demonstration of the futility of taking office, it were an anti-climax to think of Ministries now. I am certain that the Government wants Congressmen to become Ministers only on the terms of ' sober and whole-hearted co-operation ' with the Reserved half of the bureaucracy. I am sure we are all convinced that without a fair measure of self-denial we shall never be able to achieve anything, and that a policy of continuous opposition and resistance to the bureaucracy is required to give tone to our organization, and life and vigour to our movement. Lastly, let us not forget that the policy of non-acceptance of office is neither unconditional nor for all time. On the other hand, its relaxation or modification depends upon the attitude of the Government and its willingness to agree to conditions more or less similar to those that were adumbrated by Desabandhu Das at Faridpur.[1]

Objection is raised to the continuance of our present policy in the Councils on the ground that it has been tried for the past three years and that we are not yet in sight of the realization of our hopes. The charge of barrenness is falsified by the party's splendid record of achievement in the last Assembly and in the Councils, and by the results of the general elections as a whole. Shall we forget that it was to create an atmosphere of resistance both in the Councils and in the country that we entered the former and that we succeeded in making their atmosphere invigorating and markedly different from what it was before ? We have not yet fully acquired the habit of resistance. And the power of resistance must be indefinitely increased till it fulfils itself. Again, this time, the work in the country must be our first care ; it will then easily gather such volume and intensity as to sweep everything before it.

IX. His Excellency the Viceroy, Lord Irwin, on the nationalist Demand for a Revision of the Constitution, 24 January 1927[2]

I have not infrequently been told that the problem is psychological, and that many, if not most, of our present difficulties in regard to pace and manner of advance would disappear, if it was once possible to convince India that the British people were sincere in their professed intention of giving India Responsible Government.

It is difficult to know in what way one may hope to carry conviction to quarters which remain unconvinced. I have already stated my belief that, whether what the British people has sought and is seeking to do

[1] In the first week of May 1925, at the meeting of the Bengal Provincial Conference, C. R. Das put forward the following conditions as a basis of agreement with the Government : ' (i) General amnesty of all political prisoners ; (ii) A guarantee of the fullest recognition of our right to the establishment of Swaraj within the Commonwealth in the near future, and in the meantime till Swaraj comes, a sure and sufficient foundation of such Swaraj shall be laid at once ; (iii) We on our part should give some sort of undertaking that we shall not, by word, deed or gesture, encourage revolutionary propaganda and that we shall make every effort to put an end to such a movement.'—P. Sitaramayya, *The History of the Indian National Congress* (Padma Publications Ltd, Bombay, 1946), vol. I, pp. 282-3. [Ed.]

[2] Address at the opening session of the Third Legislative Assembly. *Speeches of Lord Irwin* (Government of India Press, Simla, 1930), vol. I, pp. 207-13.

in India will be approved or condemned by history, their own inherited qualities left them no alternative but to open to India the path in which they had themselves been pioneers, and along which they have led and are leading the peoples, wherever the British flag is flown.

Moreover, in the success of the attempt to lead a friendly India towards self-government, the self-interest and the credit of Great Britain before the world are alike engaged, and forbid her to contemplate with equanimity the failure to achieve a purpose which has been so publicly proclaimed. Every British party in a succession of Parliaments, elected on the widest franchise, and therefore representing in the widest possible manner the British people, has pledged itself to the terms of the 1917 Declaration. They have implemented those terms by legislation, and thus given practical proof of sincerity by introducing wide and far-reaching changes into the structure of the Indian Government.

From those undertakings no British party can or will withdraw and, although the British race may lack many excellent qualities, they can afford to remain unmoved by charges of bad faith, which their whole history denies.

But, it is said, the alleged sincerity of Parliament receives practical contradiction on the one hand by arbitrary executive acts such as the detention of certain men without trial in Bengal, and on the other by the reluctance of Parliament to give a firm time-table for the completion of its loudly professed purpose of making India herself responsible within the Empire for her own government. The first question concerns the exercise of that executive responsibility which must rest upon any administration, however constituted ; and, though I am well aware of its political reactions, it is a question which must be dealt with on its merits, and has no direct relation with the general question of constitutional advance. For constitutional forms may vary widely, but the maintenance of law and order is the inalienable duty of all those on whom falls the task of government. And indeed the action, of which complaint is made, is solely due to the fact that Government has had good reason to believe that those now detained had rejected the way of constitutional agitation for that of violent conspiracy, and that to put a term to their dangerous activities was essential.

I share with all Hon'ble Members the desire to see an end to the necessity for the continuance of these measures, but the guiding principle in this matter must, and can only, be the interests of the public safety. Nor is the matter one that rests wholly or mainly in the hands of Government. Before releases can be sanctioned Government must be satisfied either that the conspiracy has been so far suppressed that those set at liberty, even if they so desired, would be unable to revive it in dangerous form, or, if the organization for conspiracy still exists, that those released would no longer wish to employ their freedom to resume their dangerous activities. Government have always made it clear, and I repeat today, that their sole object in keeping any men under restraint is to prevent terrorist outrages, and that they are prepared to release them the moment they are satisfied that their release would not defeat this object.

The other main ground for challenging the sincerity of Parliament is based, as I have said, upon the general method of approach that Parliament has adopted towards the problem of Indian constitutional development, and as regards this, I wish to speak more fully.

Those who are anxious to see constitutional advance must either coerce Parliament or convince it. I cannot emphasize too strongly that in this matter they are not likely to succeed in coercing Parliament, and that Parliament will resent the attempt to do so, under whatever shape the attempt is made. Moreover, it must inevitably be gravely disquieted by language, which appears to be inspired by hostility not only to legitimate British interests, but also to the British connexion. Nor is this feeling on the part of Parliament the mere selfish desire to retain power that it is sometimes represented. Parliament believes, and in my judgement rightly, that as it has been placed by history in a position to guide and assist India, it would be definitely defaulting on these obligations if it surrendered its charge before it was satisfied that it could be safely entrusted to other hands.

Parliament therefore will be rather inclined to examine the practical success or otherwise that has attended the attempt it has made to solve the problem. It will be quite ready to believe that there are features in the present arrangements which can be improved—and it will be ready to improve them. What it will not understand is the line of argument which says that, because the present foundations for future Responsible Government are alleged to be at fault, this is necessarily to be remedied by immediately asking those foundations to bear the entire weight of the whole edifice we desire to build.

When Parliament invites India to co-operate in the working of the reformed constitution, it does not invite any Indian party, as it was authoritatively stated the other day,[1] to lay aside for the time being its demand for Swaraj ; it does not desire that any party or individual should forego the freest and fullest right of criticism and constitutional opposition to any action that Government may take ; but it does invite Indian political parties to show whether or not the ultimate structure, which Parliament is seeking to erect, is one suitable to Indian conditions and Indian needs. If it sees any large section of Indian opinion, however vocal in its desire to further the cause of Indian self-government, steadily adhering to the determination to do nothing but obstruct the machinery with which India has been entrusted, Parliament is more likely to see in this evidence that the application of Western constitutional practice to India may be mistaken than proof of the wisdom of immediate surrender to India of all its own responsibility. It is therefore a matter of satisfaction that a considerable part of the political thought of India has not allowed itself to be dissuaded by criticism or opposition from endeavouring to work the new constitution with constructive purpose. Those who so guide their action are in my judgement proving themselves the true friends of Indian constitutional development.

Parliament is likely to judge these matters as a plain question of practical efficiency. It will be less interested in the exact legal and constitutional rights granted by the reforms to the Indian Legislatures than in the extent to which these Legislatures have realized their responsibilities and duties. It will be quite willing to recognize and make allowance for the limitations placed upon Legislatures by the existing

[1] The reference is presumably to the speech by Lord Birkenhead, the Secretary of State for India, in the House of Lords on 28 July 1926.—*Parliamentary Debates* (Official Report), Series V, vol. LXV, 1926, pp. 312-13. [Ed.]

Constitution but it will be genuinely puzzled and disappointed if it finds that a good part of ten years has been wasted in a refusal to play the game because some of the players did not like the rules. Propaganda in favour of altering the rules in the early stages of the game will have little effect on the mind of Parliament, but, on the other hand, it will certainly be influenced if it finds the Indian Legislatures exercising their responsibilities, albeit limited, in a spirit of service to India, and tacitly assuming always that their real responsibility is greater than that which is expressed in any Statute.

For Parliament has spent hundreds of years in perfecting its own Constitution, and knows very well that it has only grown into what it is today by the steady use and extension of the power, at first limited, but by custom and precedent constantly expanding, which it contained. There was a time in Canada, when the religious differences between Protestants and Roman Catholics were supposed to constitute an absolute bar to full self-government ; but after a few years, owing to the good sense of the Canadian Legislature, the very real powers of the British Parliament to intervene were silently allowed first to fall into desuetude and then to disappear. Parliament knows too that it is by this means that every one of the Dominions has obtained fully responsible self-government, finally leading, as we have seen at the last Imperial Conference, to a wide revision of the letter of constitutional relations previously prevailing between the several Governments of the Empire.

What then is the position ?

If we concede, as I ask we may, to British and Indian peoples sincerity of purpose, we are in agreement on the fundamental matter of the end we desire to reach. There may be, and is, disagreement over the ways and means of reaching it ; but it is surely a strange distortion of perspective if we allow our conduct to be unduly influenced by differences on issues, which are after all only incidental to the main issue on which we are agreed.

Here, as in other human affairs, evolutionary progress can be realized in two different ways, between which we have constantly to make our choice. Either we can search out points of agreement in the final purposes which inspire thought and action ; or, rejecting these peaceful counsels, we can follow the way of conflict where agreement is forgotten, where disagreements are exaggerated, and where the fair flowers of mutual understanding and trust are overgrown by the tangled weeds of suspicion and resentment. In many directions and throughout many centuries the world has made trial of the last, and, in sore disappointment at the results, is coming painfully to learn that the way of friendship may be at once the more noble and the more powerful instrument of progress.

I have thought it right to say so much, because I am deeply impressed with the gravity of the situation and with the necessity that lies upon us all of facing facts. I am conscious that much that I have said may evoke criticism and excite opposition ; but I hope that I may have succeeded in saying it in words that will not wound the legitimate susceptibilities of any. If in this respect I have anywhere gone astray, and employed language which has falsified my hopes, I would here express my genuine regret. But believing as I do that what I have said is true, I should think myself to have been lacking in my duty, if I had been

deterred from telling this Assembly frankly what I conceive to be the truth, from fear that it might sound unpleasantly upon their ears. It were better to be blamed for saying unpleasant things if they are true in time, than to be condemned for saying them too late. I think it is essential that India should clearly appreciate some of the factors which will be powerful to influence the mind of Parliament. I have sought, so far as my own experience and knowledge on these matters is of any worth, to place India in possession of them and I earnestly hope that, in the time which will elapse before the Statutory inquiry, events may follow such a course as may convince both India and Great Britain that it is possible for them harmoniously to work together for the consummation of their common hopes.

Section B : Home Government

I. Parliament and Indian Affairs

(1) *Submission of Reports and Accounts by the Secretary of State to Parliament*

Section 26 of the government of india act, 1919:

(1) The Secretary of State in Council shall, within the first (twenty-eight days)[1] during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(*a*) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several Provinces ; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof ;

(*b*) the latest estimate of the same for the financial year last completed ;

(*c*) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interests borne by those loans, debts and liabilities respectively, and the annual amount of that interest ;

(*d*) [2]

(*e*) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

[1] These words were substituted for the words ' fourteen days ' by Sch. I of the Government of India (Amendment) Act, 1916 (6 & 7 Geo. V, c. 37).

[2] Paragraph (*d*) was repealed by Sch. II, ibid.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each Province, in such form as best exhibits the moral and material progress and condition of India.

(2) *Limits of Discussion on Indian Affairs in Parliament*

(i) *Debate in the House of Commons, 1 March 1921*[1]

SIR H. CRAIK : I desire with your permission, Mr Speaker, to raise a point of Order arising out of certain rulings which you gave on Wednesday and Thursday last, which rulings have given rise to anxiety in many quarters. That is due to an interpretation being placed upon them which I think they were not intended to bear. The point arose on Wednesday with reference to a question as to the action of a Governor in appointing a certain Minister, and you said, Sir,

> 'That does not seem to be a matter for this Parliament.'

You further stated :

> 'The House having given practically Home Rule or something in the nature of Home Rule to these Councils, the less it interferes with these Councils the better.'—[Official Report, Wednesday, 23 February 1921, col. 901, vol. 138.]

On Thursday in reply to a question of my own as to the responsibility of the Governor to this House through the Secretary of State, quite irrespective of any question of the Minister or the Council, you stated :

> 'The question was intended to hit the Minister through the body of the Governor.'—[Official Report, Thursday, 24 February 1921, col. 1149, vol. 138.]

I desire to raise now no question in regard to the Minister or the Local Council, nor, so far as I understood, was either of these involved in the question of the responsibility of the Governor to this House through the Secretary of State for India. I venture to call your attention to the Preamble of the Act of 1919, wherein, in reference to the progressive realization of responsible government in British India, it is stated :

> 'Progress in giving effect to this policy can only be achieved by successive stages,'

and further :

> 'The time and manner of each advance can be determined only by Parliament upon whom the responsibility lies for the welfare and advancement of the Indian peoples.'

I would further call your attention to the fact that the appointment of the Minister rests solely with the Governor, and that under the Act and in accordance with strong recommendations from the Joint Committee responsibility to this House through the Secretary of State is strongly affirmed, and any rules restricting such responsibility must be approved by Parliament under Section 33 of the Act. I desire therefore to ask you whether we are right in assuming that nothing in your rulings of last week should be understood as limiting the powers of Parliament to supervise the action of officers acting in India under the Secretary of State, or the right of Members of this House to raise questions as to such action.

MR SPEAKER : I thank the Right Hon. Gentleman for having been

[1] *Debates on Indian Affairs : House of Commons* (Session 1921), pp. 28-30.

kind enough to postpone from yesterday to today the raising of this point of Order. That has given me more time to look into the matter and refresh my memory by reading again the Preamble to the Act of 1919. The more I look at it the more I am convinced that I was right. The last paragraph says :

> 'And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.'

If, therefore, this House was of opinion that it was desirable to give the Provinces of India the largest possible measure of independence of the Government of India *a fortiori*, it is desirable that those Provinces should be given a large measure of independence of the Imperial Parliament. That was my reading and that is my reasoning upon the Preamble. I have also looked at the Act again. I have come to the conclusion that, having started upon this new departure of granting a measure of self-government to the Provinces of India, it is highly undesirable that this House should interfere in any way with the control by those provincial Legislatures of their own affairs. The Ministers who are selected by the Provincial Governors are selected under the Act of Parliament by the Governors, but the Ministers are responsible to the Legislative Councils of those Provinces, and even if this House were to pass some censure, either direct or indirect, upon such a Minister, it would be futile. Therefore, it is very undesirable that it should be done or that any step should be taken which would lead up to it.

It seems, therefore, to me that, taking the broad view of the situation, Parliament intended to transfer to these Provinces of India complete control, subject, possibly, to the action of the Indian Legislature, of the Transferred subjects and of the Transferred subjects only—those are the only ones I am referring to. For that purpose the Governors of Provinces are empowered to select Ministers who will be responsible to the Provincial Legislative Council. Therefore, to permit criticism of the character or conduct of the Governors in the matter of Transferred subjects appears to me to nullify the intentions of the Act. I have also come to the following conclusion. If it is desired to condemn the action of any Governor in a matter not Transferred, it is open to a Member to make a Motion of a character similar to that which is made in the case of the Governor-General of India or the Lord Lieutenant of Ireland. That, I think, replies to the last part of the Hon. Member's point of Order as to the power of this House to supervise the action of the officers acting under the Secretary of State.

(ii) *Statement by the Earl of Lytton, Under-Secretary of State for India, in the House of Lords, 8 March 1921*[1]

It is, I think, well that both Houses of Parliament should understand the effect of the Government of India Act which they have recently passed ; and it is no less important that this matter should be understood in India and that any ground of fear or misapprehension there should be removed. . . . With regard to Central subjects directly administered

[1] *Debates on Indian Affairs : House of Lords* (Session 1921), cols 59-62.

by the Government of India, and also as regards Reserved subjects in the Provinces, the legal position remains exactly what it always has been, the Secretary of State being theoretically responsible to Parliament for every act within those spheres of every Government in India—a responsibility which in general, of course, has to be translated into practice by allowing the Governor-General in Council and the Provincial Governors in Council discretion to administer their charges subject to the authority only of the Secretary of State.

. . . But though this remains the legal position, the Act has created, both in the Central Government and in the Provinces, much larger and more representative Legislatures than existed before, all of which have substantial elected majorities and are conducted on the assumption that the new Provincial Governor will be given as free a hand as possible in shaping Provincial policy, and in dealing with Provincial affairs generally. Account must be taken of these two facts which are new factors in the situation. The Secretary of State is disposed to act on the advice of the Joint Select Committee, who stated in their Report that 'he might reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government of India and the Indian Legislature are in agreement'.

And similarly—I am again quoting the Report—'in purely provincial matters, which are Reserved, when the Provincial Government and the Legislature are in agreement their views should ordinarily be allowed to prevail'.

Subject to those considerations so far as Reserved Provincial subjects and Central subjects are concerned, the legal position is exactly what it always has been.

But in respect of Transferred Provincial subjects it is obvious that there must be a substantial change.

* * *

It must be perfectly clear that government in India, under the new system, would be absolutely impossible if Parliament, by virtue of its ultimate responsibility for the welfare of India, were to interfere in the administration of subjects which it has transferred to Local Governments as represented by the Governor and his Ministers, and if it were to seek to make Indian Ministers responsible to itself in detail as well as to their Governors and their own Councils.

. . . The Secretary of State in Council, on the advice of one of Lord Southborough's Committees[1] and of the Joint Select Committee, limited by Statutory Rule the exercise of his powers of superintendence, direction and control, in relation to Transferred subjects to cases where Central subjects or Imperial interests are affected. It is in that spirit we appeal to Parliament to exercise an equal self-restraint in the use of its rights of interrogation and criticism. . . . Parliament has undoubtedly the ultimate responsibility, but it must exercise some self-restraint in the exercise of that responsibility. The thorough investigation of the working of the new Act by periodical Statutory Commissions has been provided

[1] Reports of the Committee on Franchise and the Committee on the Division of Sanctions which reported on 26 February 1919. [Ed.]

for in the Act itself, but Parliament must be content to limit its legal right of pulling up the young plants to see how they are growing.

II. Relaxation of the Control of the Secretary of State over the Government of India and the Provincial Governments

(1) *The Report of the Joint Select Committee of Parliament on Clause 33 of the Government of India Bill, 17 November 1919*

Clause 33. The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India and through it with the Provincial Governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible to Parliament; but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to anyone else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that England's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by Statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which vests in the Crown; and neither of these limitations finds a place in any of the Statutes in the British Empire. It can only, therefore, be assured by an acknowledgement of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

The relations of the Secretary of State and of the Government of India with Provincial Governments should, in the Committee's judgement, be regulated by similar principles, so far as the Reserved subjects are concerned. It follows, therefore, that in purely provincial matters which are reserved, where the Provincial Government and Legislature are in agreement, their view should ordinarily be allowed to prevail though it is necessary to bear in mind the fact that some Reserved subjects do cover matters in which the Central Government is closely concerned. Over Transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will de defined by rules under sub-clause 3 of clause 1 of the Bill.[1]

(2) *Control over Transferred subjects: Rule under Section 19A of the Government of India Act, 1919*[2]

The powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act or otherwise shall, in relation to Transferred subjects, be exercised only for the following purposes, namely :

(1) to safeguard the administration of Central subjects ;
(2) to decide questions arising between two Provinces, in cases where the Provinces concerned fail to arrive at an agreement ;
(3) to safeguard Imperial interests ;
(4) to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire ; and
(5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council, under or in connexion with or for the purposes of the following provisions of the Act, namely, section 29A, section 30 (1A), Part VIIA, or of any rules made by or with the sanction of the Secretary of State in Council.

(3) *Recommendations of the Reforms Enquiry Committee, 1924, and the action taken thereon*[3]

1. The difference between the Majority and the Minority was briefly to the following effect. The Majority considered that, even if the constitutional powers of the Secretary of State were, as they must be, retained unimpaired, it was still possible for his control to be relaxed, either as a result of conventions somewhat on the lines of the Fiscal Convention, or in the practice of administration, by abstention on his part from interference, in cases affecting purely Indian interests. In finance and service matters, the Majority considered that such abstention might be confirmed by a definite delegation of powers by rule. The Majority held that the relaxation of control on these lines would supply

[1] See rule under section 19A of the Government of India Act, 1919, given below. [Ed.]
[2] Notification No. 835-G, dated 14 December 1920. See also, Rule 49 of Devolution Rules. [Ed.]
[3] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 218-19.

a most important channel for constitutional advance within the scope of the Act.

The Minority were rather more sceptical, and took the view that consistently with the Secretary of State's responsibility to Parliament, any divestment of his powers of control over Central or over Provincial Reserved subjects was out of the question, and any relaxation of their use by definite delegations of power by rule must be of a very limited character. The Minority recognized the difficulty of defining 'purely Indian interests'; and, in short, they were of opinion that, within the scope of the Act, to which they were bound by their terms of reference, there was little or no room for any material alteration in the exercise by the Secretary of State of his powers of control and that any modifications which might be made, whether by convention or otherwise, would necessarily fall very far short of being in any sense a genuine constitutional advance.

2. Though based upon remarks made by the Joint Select Committee on clause 33 of the Government of India Bill,[1] the recommendation of the Majority did not expressly include any criterion of agreement between the executive Government in India and their Legislatures as the basis for delegation or control, and their recommendation appears to have been mainly directed towards those powers of the executive Governments which would probably come only rarely before the Legislature. Any extended application of the principle referred to in the Joint Select Committee's comments on clause 33, omitting agreement between the Executive and the Legislature would involve obvious constitutional difficulty, while the Secretary of State remains responsible to Parliament and so long as the Central Government remains without constitutional responsibility within India. The difference between matters in which the Legislatures were concerned and those which would not come before the Legislatures at all is therefore fundamental.

In matters in which the Legislatures are concerned, the Majority may be assumed not to have intended to proceed beyond the principle expressed in the remarks of the Joint Select Committee of Parliament on clause 33 of the Government of India Bill, which they themselves cited; but further steps in the direction of establishing a convention similar to the Fiscal Convention are hampered, in the first place, by the difficulty, mentioned by the Minority, of defining the term 'purely Indian interests', and secondly, by the difficulty of arriving at a suitable definition of 'agreement between the Legislature and the Executive'. For example, it might not be appropriate to regard the Legislature and the Executive as being in agreement when the latter accepts a resolution of the former for reason of general policy, although objecting to it on its merits.

3. In matters which would not come before the Legislature, the most that can be expected under the present Constitution is that there should be no interference by the Secretary of State in the details of administration, and that in larger matters in which he cannot expect that Parliament would allow him to delegate his authority or divest himself of his responsibility, the exercise of his powers to superintend, direct and

[1] See pp. 18-19 above. [Ed.]

control should be made with full consideration for the letter and the spirit of the Preamble to the Government of India Act.

In the light of these considerations, the recommendation of the Majority is seen to raise issues of very varying importance, and to suggest action of three different kinds.

The constitutional implications in the case of matters coming before the Legislature have prevented the Government of India from seeking to establish any convention, other than the Fiscal Convention, based on concurrence of authorities in India.

In other matters, in regard to financial administration, the suggestion of the Committee for delegation of powers by rule has not been pursued ; but in regard to service matters, in a separate connexion, those delegations have been carried out to which reference is made in the memorandum on the services separately presented to the Commission.[1]

The further suggestion that in other matters of administration a practice of non-interference by the Secretary of State in affairs of purely Indian interest was recognized by the Committee themselves as raising difficulties of definition. The problem is largely one of administrative convenience, and has been examined in that light. But no definite suggestions have been made to the Secretary of State.

III. Sir Tej Bahadur Sapru on the Control of the Secretary of State over the Government of India, 28 January 1923[2]

So far as the Central Government is concerned, I think there are two outstanding facts which I must at once place before you. In the first place, the Central Government is directly responsible to Parliament through the Secretary of State. In the second place, it is in a manner responsible to the Legislative Assembly consisting of a solid non-official majority and a Council of State with a non-official majority but with a strong dose of conservatism in its present constitution. In regard to the control of the Secretary of State, I wish on this occasion again to emphasize generally, without referring to any particular matter which came to my knowledge in the course of my official duties, that the control of the Secretary of State over the Government of India is not a mere phrase or convention. It is a living control exercised over the cable and exercised not very sparingly. It does not mean that the Secretary of State always overrides the Central Government, or is in perpetual war with the Governor-General in Council, but the fact remains that he holds the reins in his hands and holds them very tight at times. Well, constitutionally, that is to say, according to the present Constitution, the position is perfectly sound and easily intelligible. The Central Government is responsible for the good government of this country to Parliament and the accredited agent of Parliament is the Secretary of State. The Statute vests powers of direction, control and superintendence

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. v, pp. 806-19.

[2] Speech by Sir Tej Bahadur Sapru at a dinner given in his honour by the United Provinces Liberal Association on 28 January 1923.—*The Indian Annual Register* (1923), vol. II, p. 76.

in the Secretary of State and if he does exercise those powers from day to day, legally he is within his rights.

IV. Mr C. Y. Chintamani on the Control of the Secretary of State over the Provincial Governments, 10 August 1924[1]

I do believe that the amount of control exercised or sought to be exercised by the Government of India and the Secretary of State—here and now it is immaterial for my purpose which of the two outside authorities exercises it—has been less in the Transferred than in the Reserved Departments whether in matters of legislation or administration. But my complaint is against the existence of that power or its exercise at all except where a Governor acting with his Ministers has exceeded his own legal powers or so clearly abused them as to necessitate the intervention of higher authority to prevent grave injustice. I can, if called upon to do so, cite instances within my knowledge of interference or attempted interference by Delhi and Simla or by Whitehall where I was and am convinced there should have been none.

V. The Government of India on its Relations with the Secretary of State for India in Council[2]

37. The relations of the Government of India with the Secretary of State in Council group themselves most conveniently round the particular powers which the Government of India Act has reserved to the Secretary of State, his control[3] of the expenditure of the revenues of India in British India, and his general powers[4] of superintendence, direction and control.

In the first category fall a large number of powers of which many, such as the power to sanction the appointment of a Deputy Governor, have never been used. But it also includes the powers to make rules for regulating the classification of the Civil Services in India, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct. These powers are now in process of partial delegation to authorities in India. Meanwhile their exercise has necessitated a constant stream of correspondence between India and England, and occasioned not infrequent differences of opinion. The Secretary of State in Council has always emphasized his guardianship of the official services, and he has accordingly exercised over the Government of India a control varying from general questions of service conditions to orders in regard to the particular circumstances of individual officers which by rule involve reference to him. His powers in this regard have been more particularly defined in various sets of rules, such as the Fundamental Rules. But, whatever the volume of this business, it is not of prime

[1] Memorandum by Mr C. Y. Chintamani.—*Report of the Reforms Enquiry Committee* (1924), appendix 5, p. 278.

[2] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 91-4.

[3] The Government of India Act, 1919, Section 21.

[4] ibid., Sections 2 and 33.

importance for the present account, for it was, under other conditions, a feature of pre-reforms administration, and, seeing that the Indian Legislature has no power over conditions of service, it does not arise from the cardinal change in the Government of India, namely, the independence and authority of the legislative Chambers.

It is otherwise in the case of financial control. The Act of 1919 in the manner of earlier Acts made the control of the Secretary of State over expenditure in British India 'subject to the provisions of the Act and rules made thereunder' and one of these provisions introduced a new controlling authority over expenditure, by laying down, albeit with two well-known qualifications, that the proposals of the Governor-General for the appropriation of funds shall be submitted to vote of the Legislative Assembly. This change and the practical difficulty in scrutinizing the great mass of the expenditure of the Government of India rendered it necessary to delegate large powers of initiative to the Government of India. The rules regarding expenditure sanctions have, therefore, been relaxed so as to require the previous sanction of the Secretary of State in Council in only a limited class of cases.[1] There is, however, the general understanding that plans involving important questions of policy should not be initiated without consultation with him. Nevertheless the theoretical position is clear. The Secretary of State remains in law responsible to Parliament for all expenditure from Indian public funds. Accordingly, control from home over administration in the Finance Department of the Government of India is closer than that over almost any other class of administration, except perhaps defence, foreign relations and the conditions of service under the Crown. The Budget proposals of the Government of India and particularly those affecting taxation must be referred to the Secretary of State in the first instance and approved by him before the Budget is presented to the Legislature. He also controls ways and means operations, sales of Council Bills, the management of the Gold Standard and Paper Currency reserves, the policy with regard to exchange and currency, and all borrowing operations in London.

The control of the Secretary of State of matters of railway administration is in the main financial, but it is illustrative of the three categories suggested at the beginning of this paragraph, for the particular statutory powers of the Secretary of State include powers to restrict the making of contracts, and all questions of general railway policy are controlled by the Secretary of State under his general powers of superintendence.[2] The accepted policy of managing railways on commercial lines and the growing interest and influence of the legislative chambers in railway matters impose practical restrictions on the interference of the Secretary of State. In practice he is concerned only with the very broadest questions of administration, organization and finance. Thus when the construction of a new line is proposed, the Secretary of State's approval is required if the estimated cost chargeable either to capital or to revenue exceeds $1\frac{1}{2}$ crores of rupees, or if an objection is raised by an authority working a railway to which the new line will be connected or of which the interests will be affected by the new line. Without the sanction of the

[1] See pp. 25-7 below. [Ed.]
[2] Government of India Act, 1919, Sections 29 and 30.

Secretary of State the Government of India may not start open line works when the estimated capital cost of the new work or group of works forming one project exceeds 1½ crores of rupees. All proposals for the purchase of any portion of a railway belonging to a company of English domicile, or the sale of any portion of a State railway, require the sanction of the Secretary of State. When the purchase price of any branch line belonging to a company of Indian domicile exceeds 1½ crores of rupees or the amount payable under the contract with the company whichever is less, the sanction of the Secretary of State is required. When disputes arise out of the terms of contract executed in England with companies of English domicile, the Secretary of State's sanction is necessary to their reference to arbitration. If any suggested abandonment of railway revenue raises an important question of policy, the Secretary of State requires reference to himself before action is taken.

38. In the matters described in the preceding paragraph it is not always clear whether the control exercised by the Secretary of State is based on particular or general powers, nor is it in practice necessary that the source of his authority should be indicated. But there are many matters in which the action of the Secretary of State is clearly an exercise of general superintendence, direction and control. His powers of this nature are still unrestricted by either rule or convention, for no action has been taken on the suggestion by the Joint Select Committee of a convention that the Secretary of State should not ordinarily dissent from concurrent conclusions of the Government of India and the Legislative Assembly on matters of purely Indian interest, or on a somewhat similar suggestion by the Reforms Enquiry Committee.[1] The Secretary of State in Council retains very considerable powers. In particular he is absolutely responsible to Parliament for the maintenance of peace and order in India, and Imperial control over India's foreign and military affairs is unrelaxed. In certain cases the Secretary of State has by executive order insisted on being placed in a position to exercise control, if so advised. Thus his concurrence must be obtained before the Governor-General refuses statutory previous sanction to the whole or a substantial part of a provincial Bill which a Local Government desires to introduce and before the Governor-General in Council requires a local Government by executive order to refrain from proceeding with a provincial Bill which does not require statutory sanction. Again, the Secretary of State is content that only certain classes of official Bills should be reported for his approval before introduction, although the pre-reforms practice was to obtain his previous approval in principle to all projects for legislation. The more important of these classes include Bills which involve Imperial or military affairs or foreign relations, affect the rights of European British subjects or the law of naturalization, concern the public debt or customs, currency and shipping, or interfere with provincial legislation. But generally the sphere within which the Secretary of State may wish to exercise his powers of superintendence, direction and control is a matter of understanding rather than precise definition. Broad general questions are invariably referred to him, and new departures of any importance in purely administrative matters are brought to his notice. At the same

[1] See pp. 19-20 above. [Ed.]

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time the Secretary of State is not restricted in the initiation of his control. He has, for instance, *suo motu*, drawn attention to overcrowding in Indian jails, and to official criticisms of observations made in a Legislative Council by a non-official member. But except in certain financial questions the initiative of the Secretary of State has never been pushed to the extent of reducing the Government of India to the position of a mere subordinate agency, and it is probably true to say that even in matters of finance there has been on the whole a tendency as time goes on for his control to be gradually relaxed.

In army matters the position is somewhat different. His Majesty's Government maintain a larger army than they would maintain but for the necessity of defending India, and they are under a constant liability to reinforce India with troops in the event of an emergency. The question of the strength of the army in India is thus an Imperial question not because it is proposed to use the army in India for the general defence of the Empire but because it may be necessary at any moment to use the Imperial army for the defence of India. In these matters the superintendence, direction and control of the Secretary of State has, therefore, been more close, action has been taken more freely on the initiation of the Secretary of State, and the recommendations of the Government of India have been more independently considered and on occasion overruled.

Finally, it has been established that the control of the Secretary of State extends to the exercise by the Governor-General of powers vested in him, apart from his Council, unless the Act clearly indicates a contrary intention.

VI. The Indian Statutory Commission on the Control of Indian Finance by the Secretary of State in Council, 12 May 1930[1]

(i) *In the Provinces*

430. With the establishment of Responsible Government in certain spheres of provincial administration, control over expenditure on the Transferred services has definitely passed to the provincial Legislatures. The Secretary of State has not, however, completely divested himself of the responsibility for expenditure, even on Transferred Departments. For no proposal for the appropriation of funds in a Province may, under the Government of India Act, be made except on the recommendation of the Governor. The Devolution Rules require the previous sanction of the Secretary of State in Council to certain proposals for expenditure in respect of Transferred subjects before they are included in a grant, as, for instance, for the creation of permanent appointments normally held by members of all-India services.[2]

[1] *Report of the Indian Statutory Commission*, vol. I, par. 430-1.

[2] Under Rule 27 and Schedule III of the Devolution Rules, the previous sanction of the Secretary of State in Council was required in the following cases before a proposal of expenditure on a Transferred subject was included in a demand for a grant:

(i) To the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent

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As regards provincial Reserved subjects, there has been a considerable relaxation of control by the Secretary of State in Council, but the delegation of powers continues to be by means of executive orders, embodied in what is commonly known as the Provincial Audit Resolution, issued by him in virtue of the powers conferred on him by the Act. The principal items of Reserved expenditure which require his sanction are the pay and allowances of all-India services, the expenditure of Governors, the revision of establishments involving an annual expenditure exceeding a certain limit and capital expenditure on irrigation and other public works estimated to cost more than Rs 50 lakhs. In practice, the control is exercised through the Government of India which, in forwarding the proposals to the Secretary of State, offers its criticisms and suggestions.

* * *

The Budgets of Provincial Governments are not now submitted either to the Government of India or to the Secretary of State for approval before they are presented to the Provincial Legislatures, but provincial solvency is ensured by the indirect method of control over provincial borrowings. Before 1920, the Provinces were never accorded the privilege of raising loans in the open market, and they invariably borrowed the money they required from or through the Central Government. With the introduction of the Reforms, they have acquired considerable freedom, but their borrowings are regulated by statutory rules. No loan may be raised by a Provincial Government outside India without the sanction of the Secretary of State, or within India without the approval of the Central Government, and provincial borrowing is restricted to certain

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post, if the post in either case was one which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service;

(ii) To the creation of a permanent post on a maximum rate of pay exceeding Rs 1,200 a month;

(iii) To the creation of a temporary post with pay exceeding Rs 4,000 a month;

(iv) To any expenditure on the purchase of imported stores or stationery otherwise than in accordance with such rules as were made in this behalf by the Secretary of State in Council.

In 1932 the control of the Secretary of State in Council over the Transferred subjects was further relaxed by the amendment of Rule 27 and by the omission of Schedule III, of the Devolution Rules. The rule, as amended, was as follows:

' 27 (I) Subject to the approval of the Secretary of State in Council, if such approval is required:

(i) by any rules made by the Secretary of State in Council under the Government of India Act, or,

(ii) by any instructions issued by the Secretary of State in Council delimiting the power of expenditure of the local Government in respect of persons in civil employment who are not subject to, or have been excluded from, the operation of the Civil Services (Classification, Control and Appeal) Rules,

the local Government of a Governor's Province shall have power to sanction expenditure on Transferred subjects to the extent of any grant voted by the Legislative Council.'—Notification No. F.46/1/32, dated 29 February 1932, *Gazette of India* (1932), pt 1, p. 226. [Ed.]

purposes specified in the rules, viz. capital expenditure on projects of lasting public utility, famine relief and repayment of previous loans or advances.[1] Some Provinces have resorted to borrowing in the open market, but the bulk of provincial borrowings has been from the Central Government which, through the medium of the Provincial Loans Fund established in 1925, regulates the terms and conditions, the rate of interest and the period of amortization of all advances to the Provinces. Whatever be the machinery adopted, the necessity for some co-ordinating agency in a country with a limited market for borrowing, such as India, is generally recognized.

Regulation of provincial borrowings thus provides the Secretary of State and the Central Government with an effective instrument of control, by which the financial stability of the Provinces is secured. As statutory custodian of the balances of Provincial Governments, the Central Government is armed with additional powers, by the exercise of which provincial overdrawing can be prevented. The Central Government may, with the previous sanction of the Secretary of State in Council, prescribe the procedure to be followed in the payment of money into and the withdrawal, transfer, and disbursement of money from, the public account. It has further the power to require Provincial Governments so to regulate their programmes of expenditure as not to reduce the balance at their credit below a stated figure, and to make their orders effective by the restriction of issues. Interest charges have also priority over all other charges on provincial revenues, save only the statutory contributions to the Central Government.[2]

(ii) *At the Centre*

431. Over the financial administration of the Central Government the Secretary of State still maintains a control more rigid than over any other sphere of administration, except perhaps defence and foreign relations. Indeed, although there has been a general tendency for his control to be relaxed, the Government of India would, we think, contend that on some occasions in the past the directions of the Secretary of State on some financial questions have reduced the Government of India to the position of a subordinate agency. Large powers of expenditure have been delegated to the Government of India, but as in the case of Provincial Reserved subjects, the previous sanction of the Secretary of State in Council is required in a limited number of cases specified in the Central Audit Resolution. The Budget proposals, particularly those affecting taxation, are invariably submitted to him and his orders obtained before the Budget is presented to the Central Legislature. In the case of taxes which fall within the scope of the Fiscal Convention, however, he merely offers his observations, but does not interfere when the Government of India and the Legislature are in agreement. The Secretary of State also controls the management of the Gold Standard and the Paper Currency reserves, the policy with regard to exchange and currency, and all borrowings in England and in India.

[1] Section 30 (1a) of the Government of India Act, 1919, and the Local Government (Borrowing) Rules. See p. 178 below. [Ed.]

[2] Rules 21-6 of the Devolution Rules. See pp. 176-7 below. [Ed.]

VII. Fiscal Convention[1]

(1) *Telegram from Lord Oliver, Secretary of State for India, giving his consent to the introduction of the Bill for the protection of iron and steel in the Indian Legislative Assembly, 29 April 1929*[2]

You will realize that His Majesty's Government does not hold the view that a policy of fiscal protection is that best calculated to promote the economic and industrial interests of any country. But His Majesty's Government has no intention of departing from the spirit of the Fiscal Autonomy Convention which has been built up by pronouncements of successive Governments since 1919, and it accepts the position that (except possibly on specific grounds irrelevant to the present question) it will not disallow any tariff measure which the Government of India, after prior official consultation with the Secretary of State, recommends to the Legislature, and which the Legislature accepts.

(2) *The India Office on the working of the Fiscal Convention*[3]

While it is now settled policy that the India Office does not interfere with the enactment of any tariff measure which the Government of India and the Indian Legislature agree in desiring to place on the Indian statute book, the Secretary of State, as a member of His Majesty's Government, cannot divest himself of responsibility for ensuring that no such measure cuts across general Empire policy or is not so unfair to any constituent part of the Empire as to bring India into conflict with that part; this responsibility the Secretary of State can in the last resort fulfil (should other means fail) by exercising his right (which might in certain circumstances be a duty) of advising the Crown to disallow the measure if passed; but in order that so open a conflict may, if possible, be avoided, it is essential that he should be kept duly informed in advance of the Government of India's intentions in regard to such legislation, before the Legislature is consulted and, therefore, before the Convention operates. Any observations which he may desire to offer on the proposed legislation should receive every attention from the Government of India, who are, however, at liberty to accept or reject any suggestions made or advice given in deciding on the proposals to be placed before the Legislature. It is not a supportable interpretation of the 'Fiscal Autonomy Convention' to contend that if only the Government of India can show that a particular proposal was economic or truly fiscal (as distinct from being political) in purpose and is likely to be accepted by the Legislature, their duty to the India Office is satisfied by merely passing on information about its scope, and the rights of the India Office to express views or opinions—let alone dissenting opinions—are *ipso facto* extinguished. In a word, the essential and inevitable incongruity of the transitional system embodied in the present Indian Constitution is nowhere more clearly exhibited than in

[1] See also remarks of the Joint Select Committee of Parliament on clause 33, Government of India Bill, 17 November 1919, pp. 18-19 above. [Ed.]

[2] Memoranda submitted by the India Office.—*Indian Statutory Commission Report*, vol. v, p. 1591.

[3] ibid., pp. 1591-3.

the endeavour, in spite of the limitations involved in a strict construction of the principles underlying the Government of India Act, to give reality to the intention that India should enjoy a large measure of freedom in fiscal policy.

Mention may here be made of another example of a case to which the Joint Select Committee's general recommendation referred to in para. 21[1] has been applied. This is the question whether the Secretary of State should retain control over the principles governing the purchase of Government stores for India with a view to ensuring economy and efficiency—a matter which has been much canvassed of late years, though it is now settled in a manner which has left little scope for misunderstanding. It was settled in 1926 by the Secretary of State relinquishing control except in relation to military stores. With this exception the position is that the Secretary of State has by rule delegated to the Government of India and the Local Governments respectively the right to make their own rules.

The bulk of the purchases, so far as they are not made in India, are made through the High Commissioner, and before the Reforms of 1919 were made through the India Office. The practice of the India Office used to be to purchase in the cheapest satisfactory market ; after the war, as a purely temporary measure, a small preference was given to British manufactures, and the High Commissioner, when he took charge, at first gave a preference of about 10 per cent. In 1921 the Government of India issued instructions to the High Commissioner, based on resolutions of the Indian Legislature, to return to the practice of purchasing in the best market. In such a matter the Secretary of State does not interfere with the responsibility of the High Commissioner to the Government of India, and has never issued any instructions to him either direct or through the Government of India. Consequently, though frequently pressed by British commercial interests to intervene, he accepted the instructions of 1921 as settled policy throughout the period when he retained any control in the matter.

Section C : Central Government

I. The Instrument of Instructions to the Governor-General of India, 15 March 1921, issued under the Government of India Act, 1919

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, We do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the Local Governments of all Our Presidencies and Provinces.

VII. In particular it is Our will and pleasure that the powers of superintendence, direction and control over the said Local Governments, vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reason to the contrary appears, be exercised

[1] The reference is to the recommendations of the Joint Select Committee on clause 33 of the Government of India Bill. See pp. 18-19 above. [Ed.]

with a view to furthering the policy of the Local Governments of all our Governors' Provinces, when such policy finds favour with a majority of the Members of the Legislative Council of the Province.

VIII. Similarly it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realization of Responsible Government in British India as an integral part of Our Empire may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore we do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportunities of service have been conferred, progress towards such realization may ever advance to the benefit of all Our subjects in India.

II. The Indian Statutory Commission on the Role of the Viceroy and Governor-General, 12 May 1930[1]

189. . . . Appointed from among the most prominent public men in Great Britain, and usually discharging his task for a period of five years, the Governor-General occupies the most responsible, as it is the most picturesque and distinguished, office in the overseas service of the British Crown. For, while his activities comprise all the social and benevolent obligations of the Governor-General in the self-governing Dominions, there rests upon the Governor-General of India a direct personal share in the main burden of government, such as pertains to no other representative of the Sovereign within the Empire. Formerly, the Governor-General could not leave India during his term of office. By an amendment of the Statute, made in 1924, he may now be granted leave of absence once, but not more than once, and (unless special reasons require it) for not more than four months.

Powers and Responsibilities

190. Normally carrying out his functions with the guidance and concurrence of the Members of his Executive Council, and subject to the very critical observation of a popularly-elected Legislature representing about 250 millions of people, he can, in cases of emergency and stress, completely override that Council and disregard the most fully considered expression of opinion of that Legislature.

Thus, if in any matter his judgement is that the safety, tranquillity and interests of British India, or any part thereof, are essentially affected,

[1] *Indian Statutory Commission Report*, vol. I, pars 189-93.

he may reject the advice of his Council, and thereupon the decision of the Government of India, whether for action or inaction, is the decision of the Viceroy himself. The rules for the transaction of Council business, the allocation of portfolios among its Members, and the limitation of their scope, are entirely subject to his final decision. Similarly, in the case of the Indian Legislature, the Governor-General can dissolve either Chamber or, if in special circumstances he thinks fit, can extend its life. He can insist on the passing of legislation rejected by either or both Chambers by certifying that such passage is 'essential for the safety, tranquillity or interests of British India or any part thereof'. And while he may, with the assent of his Council, restore grants refused by the Assembly, he can on his sole initiative authorize such expenditure as he thinks to be necessary for the safety or tranquillity of British India or any part thereof. He may withhold his assent to any Bill, central or provincial, or reserve such Bill for His Majesty's pleasure. He has, in addition, powers in an emergency, without consulting the Legislature, to legislate by ordinance having effect for not more than six months.

The previous sanction of the Governor-General is required for the introduction of certain classes of Bills, both in the Central and Provincial Legislatures. It is for him to decide what items of Central expenditure fall within the non-votable categories. On him, too, falls the duty of nominating a number of official and non-official Members to the Central Legislature.

191. These are the principal legal powers residing in the Governor-General, but no mere list of powers can convey the full importance of his office or the range of his individual authority. The course of Indian politics is profoundly affected by his personality and influence. By the use of interviews and conversations and by his constant personal intervention many a political crisis is averted, and resort to his legal prerogatives is often thereby made unnecessary. Only four times since the Reforms has the Viceroy's power of certification been made use of, and never yet has the premature dissolution of the Indian Legislature been required. Very few days pass without visits by leading men in public life to the Governor-General, and every grave political event comes under his notice and study. He takes occasional opportunities of laying his views before the Central Legislature by direct address. Furthermore, he is in constant communication with the Governors of Provinces, and no new policy of any importance is ever embarked upon by them without their consultation with, and the general concurrence of, the Governor-General.

Viceroy's Relations with Indian Princes

192. To the wide range of political responsibilities resting on the Governor-General's shoulders in connexion with the governing of British India is added the direct personal charge of the relations of India with foreign countries, and of British India with the various Indian States. It is a proof of the confidence felt in the Governor-General's office that the Indian Princes should so strongly desire (as stated before the Butler Committee) to be placed in direct relationship with the Governor-General himself rather than, as hitherto, with the Governor-General in Council. Even now, all decisions of importance in connexion with the Indian States, though issued in the name of the Government of India, are really a special

concern of the Viceroy. And though under normal conditions there is no interference by the Government of India in the internal affairs of the Indian States, yet in cases of grave misgovernment or internal political trouble, when need for interference by the Suzerain Power occasionally arises, it is upon the Governor-General himself that the actual responsibility rests for initiating and carrying through such action as may be required. The Viceroy is the link between British India and the Indian Princes; in this connexion ceremonial visits and personal interviews take up much of his time ; and at the annual session of the Chamber of Princes it falls to him to preside.

His Responsibility to the Secretary of State

193. The Governor-General is at all times in intimate relation and consultation with the Secretary of State for India, keeping him fully informed of Indian events through regular correspondence both by letter and cable. And apart from this personal correspondence and the relationship which it marks, section 33 of the Government of India Act requires the Governor-General in Council to pay due obedience to all such orders as he may receive from the Secretary of State, and thus, by the exercise of the powers of control over Indian finance, legislation and administration inherent in the Secretary of State, the supervision of the British Parliament over Indian affairs is secured.

III. The Indian Statutory Commission on the Composition of the Central Legislature[1]

The Council of State

175. . . . The composition actually fixed for that body was as follows. Out of a maximum number of 60, 34 Members were to be elected: the balance was to be nominated, but not more than 20 of these could be 'official' Members. These include such Members of the Governor-General's Council as are nominated to be Members of the Upper House (at present two out of the seven). But the Act contains the provision—also to be found in the Constitution of the Union of South Africa—that an Executive Councillor has the right of attending and addressing, though not of voting in, the other Chamber also.

The electorate for the Council of State has been so framed as to give the Upper House a character distinct from that of the Legislative Assembly, and indeed the franchise is extremely restricted. Property qualifications have been pitched so high as to secure the representation of wealthy landowners and merchants ; previous experience in a Central or Provincial Legislature, service in the chair of a municipal Council, membership of a university Senate, and similar tests of personal standing and experience in affairs qualify for a vote. Electors are for the most part grouped in communal constituencies ; thus there is one member of the Council of State who is elected by the Muhammadans of the Madras Presidency, and four who are elected by the non-Muhammadans of that Province. The Sikhs of the Punjab have a member. There is one member elected by the general constituency of Burma, and another by the Burma Chamber of Commerce. Women are not entitled to vote

[1] *Indian Statutory Commission Report*, vol. I, pars. 174-7.

at elections to the Council of State, or to offer themselves for election, though it is in the power of the Council of State to pass a resolution which would remove both these barriers. The Council of State sits under a President appointed by the Governor-General, and continues for five years, unless previously dissolved.

The Legislative Assembly

176. The Legislative Assembly now consists of 145 Members, 105 of whom are elected,[1] while 26 are official Members and 14 are nominated non-officials. In this last group are included the sole representative of the Depressed Classes, the sole representative of the Indian Christians, and the sole representative of the Anglo-Indian community. Another nominated non-official comes from the North-West Frontier Province; another represents labour interests; and another the Associated Chambers of Commerce.

The 26 officials include most of the Members of the Governor-General's Council—the rest of the Council are Members of the Council of State, though, as we have said, the South African precedent is followed and any Executive Councillor can speak in either Chamber. The other official Members of the Legislative Assembly are either important Members of the Government of India's Secretariat, such as the Military Secretary and the Foreign Secretary, or are nominated as representatives of the different Provincial Governments. These constitute the 'official bloc'. . . . (The Government of India Act) provided that for the first four years of the existence of the Legislative Assembly the President should be appointed by the Governor-General, but that thereafter he should be a member of the Assembly elected by that body and approved by the Governor-General. This, therefore, constitutes a contrast with the mode of appointment of the President of the Council of State.

177. The elected Members of the Legislative Assembly are distributed amongst the Provinces in proportions which do not appear to bear any close resemblance to the distribution of population or area, but on a basis which presumably reflects consideration of the importance of each Province. The franchise has been arranged on the same lines as for the Provincial Councils, but with somewhat higher electoral qualifications. Moslems have secured separate representation by the creation of constituencies containing none but Muhammadan voters in all Provinces except Burma. Europeans also have separate representation, with one seat in Madras, two in Bombay, three in Bengal, and one each in the United Provinces, Assam and Burma. There is no separate European representative from the Punjab, Bihar and Orissa, or the Central Provinces. The Sikhs of the Punjab form two separate constituencies, each returning a Member. Forty-eight out of the 105 seats filled by election are 'non-Muhammadan' general constituencies, whether rural or urban, i.e. the electorate excludes Muhammadans, though it includes every other sort of qualified voter except Europeans and Sikhs, where those have separate electorates. It will be appreciated that the

[1] This includes the sole member for Berar—an area bigger than Switzerland—who is elected by Berar voters, but (owing to the fact that the Assigned Districts of Berar are not technically British territory) is then given a title to sit in the Assembly by the Governor-General's nomination.

system of communal electorates involves an overlapping of the areas of Muhammadan and non-Muhammadan constituencies, with the result that the average size of a general constituency for the Legislative Assembly cannot be reached by dividing the total area of the nine Provinces by the number of Members returned by such constituencies. Indeed, in those parts of India in which the members of a particular community are scattered, the area of the constituency assumes surprising proportions. The Muhammadan Member for the northern part of the Province of Madras sits for an area of 82,950 square miles, which is just about the size of Britain. The Muhammadan Member for the Central Provinces represents a constituency of nearly equal extent. The Muhammadan Member for 'Patna, Chota Nagpur and Orissa' is supposed to speak for Moslems spread over an area of 51,950 square miles, which is about the extent of England and Wales. Hindu Members are, in some cases, no better off; the Hindu Member for West Punjab, for example, represents non-Muhammadans inhabiting 64,964 square miles; and a Sikh Member represents Sikhs scattered over the same huge area.

It is worth noting that, while communal electorates exist for the Legislative Assembly to the extent we have indicated, there is no reservation of seats in 'general' constituencies returning more than one Member, such as maintains a minimum of Mahrattas in the Bombay Legislative Council, or secures the representation of non-Brahmins in Madras.

Apart from the general constituencies, Muhammadan and non-Muhammadan, and the European seats, there are certain 'special' constituencies for landowners and for Indian commerce. Thus, the Madras landowners elect to one seat; so do the Bengal landholders, the landholders of the United Provinces, of the Punjab, of Bihar and Orissa, and of the Central Provinces. The Sind Jagirdars and Zemindars hold another seat in rotation with the Gujerat and Deccan Sardars and Inamdars, so that alternate Assemblies contain a representative of landowners either from the northern or the more southern part of the Bombay Presidency. One Member represents Madras Indian Commerce, and another the Indian Merchants' Chamber and Bureau, whose headquarters are in Bombay. Another seat alternates between the Bombay Millowners' Association and the Ahmedabad Millowners' Association; and yet another passes in rotation among three Indian commercial associations in Bengal, viz. the Bengal National Chamber of Commerce, the Marwari Association, and the Bengal Mahajan Sabha. Burma sends three non-European members to the Assembly, and these, with the European already mentioned, are the sole representatives (apart from the nominated official) of that vast and distant country. Delhi Province and Ajmer-Merwara both have one Member.

The composition of the Council of State and Legislative Assembly is given in tabular form on pages 35 and 36.

IV. Scope of the Authority of the Indian Legislature: Section 65 of the Government of India Act, 1919

65. (1) The Indian Legislature has power to make laws—

(*a*) for all persons, for all courts, and for all places and things, within British India; and

Province	NOMINATED		ELECTED						TOTAL
	Officials	Non-officials	Non-Muhammadan	Muhammadan	Sikh	European	Landholders	Indian commerce	
Government of India ..	14	5[1]	—	—	—	—	—	—	19
Madras	2	—	10	3	—	1	1	1	18
Bombay	2	1	7	4	—	2	1	2	19
Bengal	2	2	6	6	—	3	1	1	21
United Provinces	1	2	8	6	—	1	1	—	19
Punjab	1	2	3	6	2	—	1	—	15
Bihar and Orissa	1	1	8	3	—	—	1	—	14
Central Provinces and Berar	1	1[2]	3	1	—	—	1	—	7
Assam	1	—	2	1	—	1	—	—	5
Burma	1	—	3[3]	—	—	1	—	—	5
Delhi	—	—	1[3]	—	—	—	—	—	1
Ajmer-Merwara	—	—	1[3]	—	—	—	—	—	1
N.-W. Frontier Province ..	—	1	—	—	—	—	—	—	1
TOTAL	26	15	52	30	2	9	7	4	145

[1] The five nominated non-official Members here designated are not nominated as provincial representatives, but as representing the following five special interests, namely, Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed Classes. But the distribution of the nominated non-official seats is not fixed—it may be varied at the discretion of the Governor-General. The official membership of 26 is a fixed number, though its distribution between the Government of India and provincial representatives can be varied by the Governor-General.

[2] This seat is filled by election by Berar voters, but owing to the fact that the Assigned Districts of Berar are not technically British territory the person elected is given a title to sit in the Assembly by the Governor-General's nomination.

[3] These five seats are filled from non-communal constituencies and the candidates need not be 'non-Muhammadans'.

COUNCIL OF STATE

Province	NOMINATED[1]		ELECTED					TOTAL
	Officials	Non-officials	Non-Muhammadan	Muhammadan	Sikh	Non-communal	European commerce	
Government of India	11 (incl. President)	—	—	—	—	—	—	11
Madras	1	1	4	1	—	—	—	7
Bombay	1	1	3	2	—	—	1	8
Bengal	1	1	3	2	—	—	1	8
United Provinces	1	1	3	2	—	—	—	7
Punjab	1	3	1	2[2]	1	—	—	8
Bihar and Orissa	1	—	2[2]	1	—	—	—	4
Central Provinces and Berar ..	—	2[3]	—	—	—	1	—	3
Assam	—	—	—	1	—	—	—	1
Burma	—	—	—	—	—	1	1	2
N.-W. Frontier Province	—	1	—	—	—	—	—	1
TOTAL	17	10	16	11	1	2	3	60

[1] The distribution of the 27 nominated seats is not fixed, and may be varied at the discretion of the Governor-General; but the officials cannot exceed 20.

[2] At alternate General Elections there are three non-Muhammadan seats for Bihar and Orissa, but only one Muhammadan for the Punjab.

[3] One of these is a Member nominated as the result of an election held in Berar.

(*b*) for all subjects of His Majesty and servants of the Crown within other parts of India ; and

(*c*) for all native Indian subjects of His Majesty, without and beyond as well as within British India ; and

(*d*) for the government of officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act ; and

[(*e*) for all persons employed or serving in or belonging to the Royal Indian Marine Service ; and][1]

(*f*) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Indian Legislature has power to make laws.

(2) Provided that the Indian legislature has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting—

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same) ;
or

(ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India ;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or Constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.

V. Indian Legislature : Legislation, Budget and General Procedure—Provisions of the Government of India Act, 1919

67. [(1)[2] Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the Chambers of the Indian Legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the President and the Deputy President ; and the rules may provide for the number of Members required to constitute a quorum, and for prohibiting or regulating the

[1] This item was substituted by the following by section I of 17 & 18 Geo. V, c. 8 :
'(e) For all persons employed or serving in or belonging to any naval forces raised by the Governor-General in Council, wherever they are serving, in so far as they are not subject to the Naval Discipline Act ; and' [Ed.]

[2] This sub-section was substituted by pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

asking of questions on, and the discussion of, any subject specified in the rules.]

(2) It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of [1][either chamber of the Indian Legislature] any measure affecting—

(*a*) the public debt or public revenues of India or imposing any charge on the revenues of India ; or

(*b*) the religion or religious rites and usages of any class of British subjects in India ; or

(*c*) the discipline or maintenance of any part of His Majesty's military, [2][naval or air] forces ; or

(*d*) the relations of the Government with foreign princes or states :

[3][or any measure—

(i) regulating any Provincial subject, or any part of a Provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian Legislature ; or

(ii) repealing or amending any Act of a local Legislature ; or

(iii) repealing or amending any Act or Ordinance made by the Governor-General.]

[4][(2a) Where in either chamber of the Indian Legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.]

[5][(3) If any Bill which has been passed by one Chamber is not, within six months after the passage of the Bill by that Chamber, passed by the other Chamber either without amendments or with such amendments as may be agreed to by the two Chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both Chambers : Provided that standing orders made under this section may provide for meetings of Members of both Chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two Chambers.]

[5][(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both Chambers of the Indian Legislature, return the Bill for reconsideration by either Chamber.]

[5][(5) Rules made for the purpose of this section may contain such

[1] These words were substituted for the words ' the Council '.—pt ii of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

[2] These words were substituted for the words ' or naval '.—ibid., pt iii.

[3] ibid., pt ii.

[4] Sub-section (2a) was inserted.—ibid., pt ii.

[5] Sub-sections (3), (4), (5), (6) and (7) were substituted for sub-section (3).—ibid., pt i.

general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.]

[1][(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either Chamber of the Indian Legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may with the consent of the Governor-General be altered by the Chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.]

[1][(7) Subject to the rules and standing orders affecting the Chamber there shall be freedom of speech in both Chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings of either Chamber.]

[2][67A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs :

(i) interest and sinking fund charges on loans ; and

(ii) expenditure of which the amount is prescribed by or under any law ; and

[(iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and

(iv) salaries of Chief Commissioners and Judicial Commissioners ;][3] and

[1] Sub-sections (3), (4), (5), (6) and (7) were substituted for sub-section (3).—pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

[2] Section 67A was inserted by pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

[3] The above items were substituted by the following by Section I of 15 & 16 Geo. V, c. 83, and were given effect to from 31 March 1924 :

(iii) Salaries and Pensions payable to or to the dependants of

(*a*) Persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;

(*b*) Chief Commissioners and judicial commissioners ;

(*c*) Persons appointed before the first day of April, nineteen hundred and twenty four by the Governor-General in Council or by a local Government to services or posts classified by rules under this Act as superior services or posts ; and

(iv) Sums payable to any person who is or has been in the Civil Service of the Crown in India under any order of the Governor-General in Council, or of a Governor, made upon an appeal made to him in pursuance of rules made under this Act. [Ed.]

(v) expenditure classified by the order of the Governor-General in Council as—

(*a*) ecclesiastical ;

(*b*) political ;

(*c*) defence.[1]

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorize such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.]

[2][67B. (1) Where either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof, and thereupon—

(*a*) if the Bill has already been passed by the other Chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both Chambers, forthwith become an Act of the Indian Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian Legislature, or (as the case may be) in the form recommended by the Governor-General ; and

(*b*) if the Bill has not already been so passed, the Bill shall be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

[1] The following was added at the end of Section 67A(3) above by Section I of 15 & 16 Geo. V, c. 83, and it came into effect as from 31 March 1924 :

For the purposes of this sub-section the expression 'salaries and pensions' includes remunerations, allowances, gratuities, any contributions (whether by way of interest or otherwise) out of the revenues of India to any provident fund or family pension fund, and any other payments or emoluments payable to or on account of a person in respect of his office. [Ed.]

[2] Section 67B was inserted by pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent, until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian Legislature and duly assented to:

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.]

VI. The Indian Statutory Commission on the Working of the Reforms at the Centre, 12 May 1930[1]

The Contrast with Westminster

248. The first essential for a correct understanding of the relations of the Central Government with the Central Legislature in India is to divest the mind of analogies drawn from the British parliamentary system. A British Cabinet can only survive so long as it has the support of a majority in the House of Commons. The Central Executive in India—the Governor-General in Council—is, on the other hand, entirely independent of, and, indeed, can seldom count with confidence on, a majority in the Indian Legislature. Yet no defeat can drive its Members from office, and the statutory powers of the Governor-General or the Governor-General in Council are sufficient to prevent opposition from bringing administration to a standstill. Again, the Opposition in the British Parliament has always before it the prospect of a return to office, when it will itself bear the burden of administrative responsibility and have to justify its former declarations. The position in India is very different. The Opposition's opportunities for criticism and its powers of influencing the course of legislative and administrative business are extensive. But it cannot be vested with responsibility for the administration and thus be called on to reconcile its criticisms with the requirements of actual government. Such a constitutional system might be supposed to have led to wholly irresponsible criticism from the Legislature and to complete indifference in the Executive. But the course of development has been otherwise. On the one hand, while the attitude of the Assembly has often been strongly influenced by its constitutional irresponsibility, it has co-operated with Government in a good deal of constructive work. On the other hand, the Executive has been far from unresponsive to the criticism and to the suggestions of the Legislature.

Grouping in the Assembly

250. There is nothing in the Indian Legislature which corresponds to the working of a party system, as that expression is understood in

[1] *Indian Statutory Commission Report* (1930), vol. I, pars 248-54.

Britain. In view of the methods by which the Legislature is constituted, nothing else could be expected. Parties in the Lower House are predominantly communal groups. The aim of the Swarajists has been to create an inclusive political party, formed on national lines, and not in terms of religion, sect, or community. This attempt, however, has left the traditional religious cleavage of Indian society in the main untouched, and this cleavage constantly shows itself in debate and in voting. The Swarajists are predominantly Hindu. The Nationalist Party is entirely drawn from the Hindu community. The Central Moslem Party is entirely Muhammadan, and we believe that the Independent Party is now predominantly so. . . . The impression produced upon the mind of an observer familiar with the British Parliament is not so much one of resemblance as one of difference. Groups form and re-form, but so far as its pledged supporters are concerned, the Government is in a permanent minority, and this affects the whole tone of debate. It may, and often does, carry a division by a combination of minority groups, but whenever political or racial feeling runs high, the majority of elected Members will usually be found on the Opposition side.

The Official Bloc

251. The official bloc of 26 Members has throughout been regarded as under the orders of Government ; it has never been found practicable to adopt the proposals of the Joint Report that officials should be allowed a free right of speech and vote, though the control has on occasion been relaxed in the case of provincial official Members. The influence of this official element has been exerted in more ways than one. A solid block of votes cast definitely for Government has not only had on many occasions a decisive effect on divisions in the two Houses, but it has often helped to rally to the support of Government elements which would have hesitated to support a cause which had not the strong nucleus of supporters afforded by the officials. The contribution in debate, which their experience had enabled official members to make on measures affecting the administration, has been substantial. Finally, the provincial official members have sometimes expressed the special views of the Governments of their Provinces. But for the most part their membership of the Assembly is valuable to the authorities because it constitutes part of the official vote.

There is a natural tendency for nominated Members to support the Government which has selected them for membership of the Legislature, and we have heard the suggestion made that, if a nominated Member opposed Government in season and out of season, he would be likely to be passed over when his place came to be refilled in the new House. But our own impression is that nominated members have, as a rule, exercised a free judgement and have endeavoured faithfully to represent the interests committed to their charge. It is certainly the fact that some nominated members have been found quite as frequently in the Opposition as in the Government lobby. The compact European group of nine members has lent Government a discriminating support, and the Central Moslem Party has been generally disposed to cast its weight on the side of Government.

Government Legislation and Resolutions

252. Up to 1928, no less than 199 Government legislative measures were passed by the Assembly, five were either rejected or withdrawn and were not considered of sufficient importance to call for the exercise of the Governor-General's overriding powers, while only four (two being the Finance Acts of 1923 and 1924) which were rejected, had to be certified. No Bill has been certified since 1925.

The bulk of the measures passed referred to amendments of the civil law, and were of subsidiary interest, but important fiscal, industrial, commercial, labour, currency and banking legislation was also passed. It was chiefly in the field of criminal law that the Assembly showed itself definitely antagonistic, regarding jealously any proposals to arm the Executive with wider powers.

Between 1921 and 1928, 95 Bills were introduced by private members. Of these, 49 related to the civil law, 19 to matters connected with law and order, and only 7 dealt with social matters. The inevitably restricted facilities for non-official legislative business resulted in a large number of these private Bills lapsing. Only 15 were passed, and it is worthy of mention that 5 private measures, which passed the Assembly despite Government opposition, were rejected by the Council of State.

Not infrequently, Government has had recourse to moving Resolutions in the Legislature with the object either of ascertaining its attitude towards public matters of outstanding importance or of indicating the lines of proposed legislation of an important nature and canvassing support for it. On 57 occasions, Government consulted the Assembly in this way, and in only 8 cases was the decision opposed to the Government view.

In the Council of State, Government has been able to rely on support on all crucial questions. Except for a small Swarajist group, the Council of State has no political parties comparable to those in the Assembly, and purely partisan considerations bulk less largely in its consideration of measures. Government has often been able to rely on the Upper Chamber to redress the effects of precipitate decisions taken in the Lower House.

The Power and Influence of the Legislature

253. But while the extent of Government legislation and the success in carrying it through without certification is noteworthy, the influence exercised by the Legislature on the Executive is no less remarkable. It has been directly exercised in three ways, firstly through putting questions to Government and the moving of Resolutions; secondly, through the financial power which the Assembly possesses over votable items in the Budget; and thirdly, through the work of standing committees. We will consider each of these in turn.

(i) *Questions and Resolutions.* The use of the power of interpellation has been steadily and effectively developed. At the outset, a marked tendency manifested itself to use this right to ventilate individual grievances or advance individual claims, but with growing parliamentary experience has come a perception of the true purpose of ' question time '. It is being more often used to draw attention to matters of real public importance, and Government action has repeatedly been influenced by

such questions. As a method of bringing influence to bear on Government, Resolutions offer greater scope for argument and discussion. Both Houses have employed this method freely. Of the 91 divisions which took place in the Assembly on non-official Resolutions before 1928 (subsequent figures have not been furnished to us), 51 went in favour of Government and 40 against it. The extent of the influence exerted in this way can be realized by a reference to some of the matters set in motion by non-official Resolutions. The adoption of a fiscal policy of 'discriminating protection', the statutory recognition and regulation of Trade Unions, the repeal of certain laws arming the Executive with special powers in emergencies and of the Press Act, the abolition of the excise duty on cotton, and the constitution of an Indian Territorial Force may be cited as topics on which the Assembly expressed its wishes by means of Resolutions, and Government took action accordingly. Government gave full effect to 37, and partial effect to 36, non-official Resolutions passed by the Assembly. Only in 32 cases was no action taken as a result of such Resolutions. Among them are cases in which the Government had not the power to do what it was asked to do. The corresponding figures for Resolutions of the Council of State in which effect has been given fully, partially, or not at all are 32, 24 and 19.

(ii) *Use of Power over Finance.* We turn now to the use made by the Assembly of its financial powers. The three Assemblies since 1921 have differed greatly in this respect. The first was faced with a series of deficit Budgets. It therefore concerned itself with trying to secure retrenchment, and being debarred from touching the non-voted items (which formed so much of the expenditure), often made disproportionate 'cuts' in the provision under those heads which lay within its power. The cuts made in the first two Budgets, of 129 and 95¾ lakhs respectively, were accepted by Government. In 1923, however, the Governor-General in Council restored the provision of Rs 114 lakhs for railway annuities, which the Assembly had cut out of the Budget, in pursuance of its wish to see the sum transferred from revenue to capital account, and also the sum of Rs 3 lakhs for the Public Services Commission, eliminated by the Assembly because it disapproved of its appointment.

The attitude of the subsequent Assemblies differed greatly from that of the first. In 1924, the Swarajists, pledged to wreck the Government, succeeded in rejecting demands amounting to 4¾ crores. All these were restored by the Governor-General in Council. The third Assembly has made a less wholesale use of its powers. After registering its political protests by throwing out certain major votes, it has with a few exceptions generally contented itself with token 'cuts' with the object of drawing attention to specific grievances. The natural disinclination of the Executive to use extensively the power of restoration has on occasion, and to a limited extent, enabled the Legislature in effect to reduce non-voted expenditure. That is to say, the Government has avoided being forced to proceed to extreme measures on the voted items by agreeing to cut down its non-votable estimates. When political considerations have receded into the background, the Executive Government and the Assembly have found it possible to agree on a common policy in the pursuit of economy.

(iii) *Standing Committees.* Two committees form part of the

machinery of the Assembly, and, through them, it exercises an important influence. The first—the Standing Finance Committee—consists of 14 members elected by the Chamber, with the Finance Member of Government as Chairman. Its principal function is the scrutiny of the Government's proposals for new items of votable expenditure. It is an advisory body, but the Executive has never persisted in presenting to the Assembly demands for supply against which the Committee has recorded its advice, and the Assembly has never directly dissented from its view.

The other committee is the Committee on Public Accounts. It is empowered to deal with the auditing and appropriation of the accounts of the Governor-General in Council, and its duty is to satisfy itself that the money voted by the Assembly has been spent within the scope of the demands granted by the Assembly. Its activities have been recognized as extending to non-voted, as well as voted, expenditure. Eight of its members are elected by the Assembly and three nominated by the Governor-General. The Finance Member is *ex officio* Chairman. Its scrutiny of expenditure is jealous and detailed, and it has notably enlarged the authority of the Assembly.

The Joint Select Committee made the definite suggestion that it might assist the political education of India if standing committees of the Legislature were attached to certain departments of Government, for consultative and advisory purposes.

It has not been found possible in all departments to constitute such committees, and the difficulty of assembling them has militated against their use. But in some cases, e.g. the Standing Committee on Emigration and the Central Advisory Council for Railways, they have proved of real assistance to the departments concerned. Not only have they been effective interpreters of public opinion to the Government, but a closer acquaintance with the difficulties of Government has on more than one occasion provided the latter with unexpected champions in the Legislature.

Indirect Influence of the Assembly

254. The indirect influence of the Assembly on the Government has been of still greater importance. Its extent is hardly realized by the Members themselves, who are inclined to lay stress on the theoretical irresponsibility of the Executive. In practice, as officials themselves have borne witness, the Government is greatly influenced by the contact of its Members with the elected representatives. Sir William Harcourt once declared that ' the value of political heads of departments is to tell the officials what the public will not stand '.[1] Under a pure bureaucracy, officials are apt to make a fetish of efficiency and to fail to give due place to the importance of acceptance by the governed of the proposals of the rulers. This weakness can be best counteracted by close contact with the unofficial mind. We believe that the Members of the Central Legislature have performed this useful function, and that their influence has often been beneficial. Further, it is important to remember that the existence of a popularly elected Legislature not only operates to amend Government measures after their introduction, but has much

[1] A. G. Gardiner, *The Life of Sir Wm. Harcourt* (Constable & Co. Ltd, 1923), vol. II, p. 587.

effect in deciding what measures should be introduced. Again, the existence of a body of unofficial persons with powers of interpellation sets up in the Administration itself a spirit of self-criticism and a desire to avoid occasion for censure.

VII. The Government of India on Constitutional Advancement by Growth of Conventions

(i) *Separation of Railway and General Finance*[1]

13. . . . A very important convention reached by agreement between the Executive and the Assembly has resulted in a strengthening of the control of the latter over the great field of railway finance. In 1924 Government placed before the Assembly proposals for the separation of railway and general finance, and later they accepted the modifications and suggestions made by a Committee to which the Assembly had referred the consideration of the whole matter. These suggestions were to the effect that the estimates of railway expenditure should be discussed with a Standing Finance Committee for Railways prior to the discussion of the demands for grants and that the railway Budget should be presented to the Assembly in advance of the general Budget with an allotment of separate days for its discussion. Accordingly, this arrangement, which is treated as experimental for the first three years and is subject to periodic revision, was introduced from the Budget of 1925. It rests upon no statutory foundation but is an important convention to the great advantage of the Legislature. . .

(ii) *Non-Voted Expenditure and the Assembly*

14. . . . The Assembly, by what is almost a convention, may and in practice does discuss the programme of Government for non-voted expenditure. It is entirely at the discretion of the Governor-General to submit to the general discussion of the Legislature the non-voted heads of expenditure.[2] Nevertheless, it has been His Excellency's unbroken practice to communicate to the Legislature permission to discuss these items also. The Legislature readily and freely avails itself of the permission especially in order to criticize non-voted expenditure on defence. It seldom devotes attention to the non-voted expenditure of the Government of India in the Foreign and Political Department.

15. . . . The distinction between voted and non-voted supply is one which the Legislative Assembly not unnaturally resents and several attempts have been made to obliterate it. The most direct attempt was that in a Resolution accepted by the Assembly on the 26th January, 1922. It was then contended that just as it is in the discretion of the Governor-General to submit all expenditure estimates to general discussion in the Legislature Chambers so it is in his discretion to submit all classes of proposed expenditure to the vote of the Assembly, and it was sought to urge the Governor-General in the exercise of that supposed

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 49-79.

[2] Section 67A(3) of the Government of India Act, 1919. See pp. 39-40 above. [Ed.]

discretion to abolish the distinction between votable and non-votable items in the Budget. Government were unable to accept the contention that the distinction is other than mandatory, and when the Resolution had been passed they had the opinion of the Law Officers of the Crown taken. The Law Officers gave it as their opinion that the Governor-General is not competent to direct that items classified as non-voted shall be submitted to the vote of the Assembly and this view is now embodied in the Government of India (Civil Service) Act, 1925.

A more indirect attempt to obliterate the distinction was made in 1923. In the preceding year Government had accepted a suggestion that a gross reduction might be made in the demand under the head 'General Administration'. No cut was made by the House, but in effect a general reduction of the grants was agreed upon. It was left to Government to distribute the reduction, and Government effected the agreed reduction by altering both voted and non-voted items. Their action was made the basis for a demand in 1923 that voted supply might be reduced by the Assembly in order to force Government to reduce their non-voted expenditure so as to make up deficiencies in voted supply. The feeling of the Assembly appeared to be that Government would be justified in exceeding supply voted by the Assembly if they could show a corresponding or greater reduction in non-voted expenditure. In effect the Assembly sought to establish control over non-voted expenditure at the expense of conceding to Government some degree of freedom of virement between major heads of appropriation. Government naturally took its stand on the clear constitutional position that the Executive may, if it chooses, effect economies in non-votable expenditure but if it wishes to spend on votable expenditure more than the Assembly has granted it must come before the House with a demand for a Supplementary Grant. When the Assembly reduces the demand by a particular amount Government has to keep the expenditure on the votable item within the amount voted by the Assembly. The discussion concluded with the refusal of Government to accept greater freedom of reappropriation, and with the ruling of the President that the suggested procedure was not admissible. What the Assembly gained on this occasion was the convention that at the supply stage occasion may be made for questioning and discussing non-votable expenditure by moving a nominal cut on votable expenditure. The now recognized method of attacking non-voted expenditure is the reduction of the voted supply ancillary to and necessary for it. For instance, the salaries of the Members of the Council of the Governor-General are non-voted. They may, however, be attacked indirectly on the demand for their touring expenses, part of which are treated as voted. Expenditure on defence is non-voted, but the army expenditure may be attacked by reduction of the voted expenditure on the secretariat establishment of the Army Department.

In effect the statutory restrictions on the financial authority of the Assembly in the matter of supply have proved to be inelastic; on the other hand, its sphere of influence has steadily grown. The proportions of voted and non-voted expenditure are roughly equal. . .

* * *

(iii) *Finance Bills*

17. . . . The history of these Finance Bills suggests several important general conclusions. First they present a very potent instrument for controlling not only voted but non-voted expenditure. The Assembly has been able, in particular, to use this weapon to reduce army expenditure. Secondly, agreement with the Executive Government has been secured when extraneous political questions were not at issue, and especially when the Assembly was single-minded in the pursuit of economy. Lastly, the Assembly has no power of initiative. It may refuse its assent to a demand or reduce it, but may not increase it or alter its destination. Similarly, rulings of the Presidents have established that it may not, even by way of amendment to the Finance Bill, impose taxation which the Governor-General in Council has not proposed. . . .

* * *

(iv) *The Committee on Public Accounts*

19. . . . The Indian Legislative Rules to which the Committee owes its origin might appear, by the use of language referring to the scope of demands granted by the Assembly, to limit the function of the Committee to scrutiny of the application of voted supply. But alike by interpretation, by statutory rules and by practice the scope of the Committee's activities has been recognized to be something much wider. In the first place the Rules have been interpreted as entitling the Committee to deal with any matter brought to its notice in an Audit and Appropriation Report, even though it may arise in relation to non-voted expenditure. Again the Rules regarding the Auditor-General in India, which themselves have statutory force, bring expenditure to which the Auditor-General has taken any objection based on contravention of the canons of financial propriety within the purview of the Committee. The effect of these two extensions of the primary powers of the Committee is that it may range over the whole audited civil expenditure of Government whether voted or non-voted and it may conduct an administrative as well as an appropriation audit. It may challenge not only the regularity of expenditure but also its propriety, even if it be not irregular. In short the scope of the Committee's inquiry is co-extensive with the scope of the Auditor-General's Audit and Appropriation Accounts of the civil expenditure of the Governor-General in Council. Finally the Committee has claimed that it should be allowed, at least by convention, to go into the receipt side of the accounts. The Committee's claim to be entitled to examine receipts has been conceded, not by the establishment of a convention, but by interpreting the statutory rules as permitting the Committee to offer in its report criticisms and recommendations upon any matter discussed in the Audit and Appropriation Report submitted to it or in the Auditor-General's forwarding report where such matter concerns the accounts of expenditure, voted or non-voted, or those of receipts. Seeing, however, that the accounts of the receipts of revenue of Government Departments are not necessarily audited by the Auditor-General, this interpretation has not in practice widened to any great extent the sphere of the Committee's authority. So far it is the Committee's scrutiny of civil expenditure which has been under consideration. Military expenditure is non-voted, and is therefore

not under the control of the Assembly. But even here the interference of the Committee has been accepted. An annual report relating to military expenditure is prepared by the Director of Army Audit, an officer of the Auditor-General's Department, and an annual appropriation report dealing with the military accounts is prepared by the Financial Adviser, Military Finance. These two reports are reviewed by the Auditor-General and together with the Auditor-General's review are then considered by an *ad hoc* Committee of officials appointed by the Governor-General in Council. The report of this *ad hoc* Committee together with all the documents on which it is based are laid before the Public Accounts Committee who scrutinize the Committee's Report but may not examine witnesses. A longer or shorter section of their report presented to the Assembly deals with military expenditure, and it has been their practice to accept the conclusions of the official Committee ; and occasionally to make a few suggestions. The proceedings of the *ad hoc* Committee are submitted to the Assembly along with the report of the Public Accounts Committee and both the appropriation report of the Financial Adviser, Military Finance, and the Audit report of the Director of Army Audit are placed in the library of the house for the use of Members.

The Committee is not an executive body. It has no power, even after the most minute examination and on the clearest evidence, to disallow any item or to issue an order. It can only call attention to an irregularity or impropriety or to failure to deal with it adequately, express its opinion thereon and record its findings and recommendations. Its report is submitted annually to the Assembly by the Finance Member, but it has never there received formal consideration and discussion. The Assembly has contented itself with passing the demands made by the Governor-General in Council for excess grants in order to cure irregularities, or in selecting individual matters brought to light in the report to be made the subject of separate discussion on a resolution or otherwise. Recently individual members of the Assembly have expressed the wish that the Report should be formally discussed in the House, but it is doubtful whether there is any general desire of this nature. In truth the report is apt to be too technical and to require too close study to commend itself to the members of the Assembly as a subject of discussion. In effect the orders passed on the report are those of Government. They are communicated to the Audit Officer concerned as well as to the Auditor-General, and are scrutinized by the Public Accounts Committee with regard to their adequacy when the Audit and Appropriation Report of the succeeding year comes under review. But the indifference of the Assembly to the report which completes the annual labours of the Public Accounts Committee must not be taken as implying any lethargy in the Committee itself. Its scrutiny of expenditure is jealous, detailed and enthusiastic, and the Committee has proved itself both industrious and efficient. It has notably enlarged the authority of the Assembly.

* * *

(v) *General Appraisement*

28. The foregoing account has brought to light several directions in which the cardinal problem of the Central Constitution, namely, the

relations between an authoritative Legislature and an official Executive, is being modified by the growth of convention. The most firmly established of all conventions is the Fiscal Convention, but the general discussion of all supply, the separation of railway finance, the discussion during demands of non-voted expenditure, the annual readjustment of ways and means, the appointment of standing departmental committees, and the enlargement of the powers of the Standing Finance Committee are all tending to harden into recognized conventions. Nevertheless the development of constitutional powers in this way is to some extent alien to the present temper of the Chambers. In the first Assembly, indeed, a Resolution was moved urging the non-interference by the Secretary of State in matters of purely Indian interest when the Government of India and the Indian Legislature are in agreement, and a similar suggestion was made by the majority of the Reforms Enquiry Committee.[1] But discussion on the Resolution was adjourned without a decision being reached, and the Minority Report of the Committee refused to build hopes on the proposed convention. The definite demand has been made, and the aim of the Majority appears to be that as a written constitution has been given, advance must be made not by convention but by statutory provision guaranteed and enacted by an Act of the British Parliament. The failure to make full use of the method of convention is partly political tactics and partly due to lack of appreciation of its potency.

Similarly, little effort has been made to modify the Constitution through the amendment of the rules and orders governing the procedure of the Chambers. The Standing Order that on the termination of a session, Bills which have been introduced shall be carried over to the pending list of business of next session, gives private Members' legislation a much better chance than it enjoys in England and it is mostly in the direction of greater facilities for non-official business that suggestions for the amendment of the Standing Orders have been made. But in general the tendency is to secure greater control over the Executive by the inclusion of as much material as possible in the explicit provisions of a written Constitution.

VIII. The Government of India on the Relations between the Legislative Assembly and the Council of State[2]

30. . . . Both have an elected majority. But the Members are designedly representatives of different elements in the country. Their interests and their temper are different. Complete harmony between them is, therefore, not to be expected.

Reference has already been made to the five Finance Bills (1921, 1923, 1924, 1925 and 1927) on which the two Chambers reached, at least in the first instance, differing conclusions. This matter of interference by the Council of State with the decisions of the Legislative Assembly on Money Bills is one on which the latter Chamber feels or

[1] Pp. 19-21 above. [Ed.]

[2] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 81-2.

pretends to feel strongly. As early as June 1921, notice was given of a Resolution affirming the principles that Money Bills should originate only in the Legislative Assembly, that they may not be amended by the Council of State and that no Bill may be amended by the Council of State in such a manner as to increase any charge or burden on the tax-payer. The Resolution was discussed in July 1923, when Government contended that there was in the Constitution no warrant for the view that the other House could not amend a Money Bill. The Resolution was lost by 30 votes to 35. The practice, however, is to initiate all such Bills in the Legislative Assembly. The Council of State continues to exercise over Money Bills the same authority as it indisputably possesses over other Bills, and has shown some disposition to retaliate by claiming that it should not be excluded from the grant of supply, but that all demands should be voted in a joint session of both Houses. A Resolution of which this was one object was moved in the Council of State in September 1927, but was negatived. In cases of legislation other than Finance Bills the two Houses have been at variance on nine occasions.

Apart from financial powers, which are important, the three main matters on which the Chambers have differed are initiation, joint committees and privileges. There is no legal or constitutional basis for the view that important legislative proposals should be initiated in the Assembly.[1] There is this much practical importance in the matter that when the initiating House has referred a Bill to a select committee the second House is debarred by statutory rules from taking a similar course. But in reality the matter is one of prestige. In practice Government have, however, generally deferred to the feeling of the Assembly, because of its capacity for delaying measures introduced in the other House, as it did on the Bill to amend the Code of Criminal Procedure in March 1921 ; but, in the interests of the dispatch of business and particularly to provide work as far as possible throughout the session for the Council of State, Government have adopted the practice of introducing non-controversial Bills and Bills of minor importance in the Council of State.

The feeling of the Assembly towards its sister Chamber has militated against the use of Joint Committees. These Committees have been constituted only on 18 occasions. The Bills so considered dealt with technical matters such as factories, electricity, boilers, mines, workmen's compensation, carriage of goods by sea, lighthouses, the Delhi University, income-tax, cotton transport, Cantonment house accommodation, the Cotton Cess, succession, the Gold Standard and a Reserve Bank and the Imperial Bank in which there were obvious advantages in pooling the expert opinion in the two Houses. But in matters of general administration or wider interest the Assembly has shown some reluctance to co-operate in this way with the other House. As early as March 1921, the Legislative Assembly, by a practically unanimous non-official vote, rejected a motion for its concurrence in the recommendation by the Council of State to refer the Criminal Procedure Code Amendment Bill to a Joint Committee of both Chambers. In 1926 when the Commerce Member moved for reference of the Insurance Bill to a Joint Committee aspersions were openly levelled in the Legislative Assembly against the other House, and the motion was withdrawn. Similarly in 1921 a

[1] *Indian Legislative Rules*, Rule 29.

proposal to refer the Finance Bill to a Joint Committee was given up in view of the opposition it met within the Assembly. When the amendment of the Criminal Procedure Code, in consequence of the recommendation of the Racial Distinctions Committee, was referred to a Joint Committee, the amendments moved in the Assembly when the Bill came up there were exceedingly numerous. The Chambers have never sat in joint session, whether conference or sitting.

IX. The Chief Commissioners' Provinces and the Reforms[1]

33. The only Provinces which do not enjoy a dyarchical Constitution are the Chief Commissioners' Provinces. The Act provides means whereby in these Provinces legislative authority independent of the Indian Legislature may be granted by the constitution of a local Legislature, and executive authority distinct from that of the Governor-General in Council may be conferred by classification of Provincial subjects, devolution of authority and allocation of funds. No use of these provisions has been made except in Coorg. The question has been agitated as a local problem in Ajmer-Merwara, and as a local and an all-India political problem in the North-West Frontier Province, but for various reasons no advance has been made, save that Ajmer-Merwara has been given representation in the Legislative Assembly which it did not previously enjoy. In these Provinces the constitutional position remains as before the reforms. The administration is conducted by the Chief Commissioner under the control of the Governor-General in Council and in exercise of delegated authority, supply is provided in the Central Budget and voted by the Legislative Assembly, and legislation is undertaken in the Indian Legislature or is made by regulation.[2]

Coorg, however, since January 1924 has possessed a reformed but not a dyarchical constitution. A Legislative Council consisting of 15 elected and 5 nominated Members may exercise legislative powers and deliberative functions similar to those exercised by the Legislature in a Governor's Province, but all legislation requires the previous sanction of the Governor-General and all Bills passed must be reserved for his consideration. Sources of revenue have been allocated as sources of provincial revenue and annual appropriation is effected through a provincial Budget, discussed but not voted in the Legislature and sanctioned by the Chief Commissioner. The responsibility of the local Government is to Parliament.

X. Powers and Functions of the High Commissioner for India: Order in Council issued on 13 August 1920

5. Subject to the provisions of the Government of India Act[3] the High Commissioner shall—

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 85-6.
[2] Section 71 of the Government of India Act, 1919.
[3] Section 29A of the Government of India Act, 1919. [Ed.]

(*a*) act as agent of the Governor-General in Council in the United Kingdom ;

(*b*) act on behalf of Local Governments in India for such purposes and in such cases as the Governor-General in Council shall prescribe ;

(*c*) conduct any business relating to the Government of India hitherto conducted in the office of the Secretary of State by or under the direction of the Secretary of State in Council or the Council of India which may be assigned to him by the Secretary of State in Council, provided that no assignment of business under this Order shall be such as to restrict the powers of superintendence, direction and control vested in the Secretary of State or the Secretary of State in Council under the Government of India Act or otherwise.

Section D : Provincial Governments

I. Instrument of Instructions to Governors issued under the Government of India Act, 1919

Instrument of Instructions to the Governor or Acting Governor for the time being of the Presidency of Fort William in Bengal.[1]

Whereas by the Government of India Act, provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realization of Responsible Government in that country as an integral part of Our Empire ;

And whereas it is Our will and pleasure that, in the execution of the Office of Governor in and over the Presidency of Fort William in Bengal, you shall further the purposes of the said Act, to the end that the institutions and methods of government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained ;

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows :

I. You shall do all that lies in your power to maintain standards of good administration ; to encourage religious toleration, co-operation and goodwill among all classes and creeds ; to ensure the probity of public finance and the solvency of the Presidency ; and to promote all measures making for the moral, social, and industrial welfare of the people, and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

II. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of

[1] Instructions in identical terms were issued to the Governors of all the nine 'Governors' Provinces'.

enfranchisement; that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the Legislative Council, being enabled to perceive the effects of their choice of a representative, and that those who are returned to the Council, being enabled to perceive the effects of their votes given therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

III. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of Our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the government of the Presidency that, so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

IV. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

V. You shall assist Ministers by all the means in your power in the administration of the Transferred subjects, and advise them in regard to their relations with the Legislative Council.

VI. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency as expressed by their representatives therein.

VII. But in addition to the general responsibilities with which you are, whether by Statute or under this Instrument, charged, We do further hereby specially require and charge you:

(1) to see that whatsoever measures are, in your opinion, necessary for maintaining safety and tranquillity in all parts of your Presidency and for preventing occasions of religious or racial conflict, are duly taken, and that all orders issued by Our Secretary of State or by Our Governor-General in Council on Our behalf to whatever matters relating are duly complied with;

(2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, specially rely upon Our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer, or have cause to fear, neglect or oppression;

(3) to see that no order of your Government and no Act of your Legislative Council shall be so framed that any of the diverse interests of or arising from race, religion, education, social condition, wealth or any other circumstance, may receive unfair advantage, or may unfairly be deprived of privileges

or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large ;

(4) to safeguard all members of Our services employed in the said Presidency in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution ;

(5) to take care that, while the people inhabiting the said Presidency shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interest shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

VIII. And We do hereby charge you to communicate these Our Instructions to the Members of your Executive Council and your Ministers and to publish the same in your Presidency in such manner as you may think fit.

II. Subjects administered by the Governor acting with his Ministers

(1) *Devolution Rules and the List of Provincial Transferred Subjects*[1]

6. The Provincial subjects specified in the first column of Schedule II shall, in the Governors' Provinces shown against each subject in the second column of the said Schedule, be Transferred subjects ; provided that the Governor-General in Council may, by notification in the *Gazette of India* with the previous sanction of the Secretary of State in Council, revoke or suspend[2] for such period as he may consider necessary the transfer of [3][all or any Provincial subjects in any Province, and upon such revocation or during such suspension the subjects shall not be Transferred subjects].

7. If any doubt arises as to whether any matter relates to a Reserved or to a Transferred subject, the Governor shall decide the question, and his decision shall be final.

8. Where an Act of the Legislative Council of a Governor's Province confers on local authorities powers of the management of matters relating to Reserved subjects, those matters shall, to the extent of the powers conferred by such legislation, be deemed in that Province to form part of the Transferred subject of local self-government.

9. (1) When a matter appears to the Governor to affect substantially

[1] *General Statutory Rules and Orders* (1926), vol. I, pp. 209-10 and 229-33.

[2] For the suspension of all Transferred subjects in the Province of Bengal from 13 June 1925 to 21 January 1927 ; see *Gazette of India, Extraordinary* (1925), p. 137.

[3] These words were substituted for the words 'any Provincial subject in any Province, and upon such revocation or during such suspension the subject shall not be a Transferred subject' by Notification No. F.-453-24, dated 18 May 1925 ; see *Gazette of India* (1925), pt i, p. 400.

the administration both of a Reserved and of a Transferred subject, and there is disagreement between the Member of the Executive Council and the Minister concerned as to the action to be taken, it shall be the duty of the Governor after due consideration of the advice tendered to him, to direct in which department the decision as to such action shall be given : provided that, in so far as circumstances admit, important matters on which there is such a difference of opinion shall before the giving of such direction be considered by the Governor with his Executive Council and his Ministers together.

(2) In giving such a direction as is referred to in sub-rule (1), the Governor may, if he thinks fit, indicate the nature of the action which should in his judgement be taken, but the decision shall thereafter be arrived at by the Governor in Council or by the Governor and Minister or Ministers, according as the department to which it has been committed is a department dealing with Reserved or a department dealing with Transferred subjects.

* * *

SCHEDULE II

List of Provincial Subjects for Transfer

Column I	Column II
1. Local self-government—that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in the Province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910 ; subject to legislation by the Indian Legislature as regards (*a*) the powers of such authorities to borrow otherwise than from a Provincial Government, and (*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.[1]	All Governors' Provinces
2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.[2]	,,
3. Public health and sanitation and vital statistics ; subject to legislation by the Indian Legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature.	,,

[1] See pp. 165-6. [Ed.]

[2] The following words were inserted and added by Notification No. F. 173-IV., dated 18 April 1932 ; see *Gazette of India, Extraordinary* (1932), p. 247 :

'but excluding medical establishments entertained in the North-West Province in connection with the Frontier watch and ward.' [Ed.]

Column I	Column II
4. Pilgrimages within British India	All Governors' Provinces
[1][5. (1)] Education, other than European and Anglo-Indian education, provided that—	,,
(*a*) the following subjects shall be excluded, namely :	
(i) the Benares Hindu University, [2][the Aligarh Muslim University] and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be Central subjects, and	
(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and	
(*b*) the following subjects shall be subject to legislation by the Indian Legislature, namely :	
(i) (the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and)[3]	
(ii) the definition of the jurisdiction of any University outside the Province in which it is situated, (and)[3]	
(iii) (for a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organization of secondary education in the Presidency of Bengal).[3]	

[1] This item was renumbered by Notification No. 519-V., dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[2] These words were inserted by Notification No. 11-S., dated 10 February 1921 ; see *Gazette of India* (1921), pt i, p. 216.

[3] Sub-items (i) and (iii) of this item were omitted by Notification No. F. 290/25/27, dated 28 April 1926 (*Gazette of India* (1926), pt i, p. 517), and the items renumbered.

Column I	Column II
[(2) Subject to the provisos set out in clause (1) in so far as they are applicable, European and Anglo-Indian education.][2]	[1][Burma]
6. [3][Public Works, other than those falling under entry 11 of this part, and included under the following heads, namely] : (*a*) construction and maintenance of provincial buildings, other than residences of Governors of Provinces, used or intended for any purpose in connexion with the administration of the Province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings ; and care of historical monuments, with the exception of ancient monuments as defined in section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3(1) of that Act ; provided that the Governor-General in Council may, by notification [4]in the *Gazette of India*, remove any such monument from the operation of this exception ; [5][either absolutely or subject to such conditions as he may, after consultation with the Local Government or Local Governments concerned, prescribe ;] [6][(*b*) roads, bridges, ferries, tunnels, ropeways, causeways and other means of communication, subject to the provisions of Rule 12-A of these Rules, and of any orders made thereunder ;][7]	All Governors' Provinces except Assam

[1] This word was inserted in Notification No. 519-V., dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[2] This clause was added by the above Notification.

[3] These words were substituted for the words ' Public Works included under the following heads, namely : ' by Notification No. F.-975, dated 22 December 1922 ; see *Gazette of India* (1922), pt i, p. 1364.

[4] See footnote [1] on p. 157 below. [Ed.]

[5] These words were inserted by Notification No. F.-121/2/25, dated 20 April 1925 ; see *Gazette of India* (1925), pt i, p. 325.

[6] This item was substituted by Notification No. 121/3/25, dated 5 October 1925 ; see *Gazette of India* (1925), pt i, p. 926.

[7] The powers of the Local Government under this item were subject to the limitations imposed by Rule 12A of the Devolution Rules :

' 12A. The Governor-General in Council shall have power to declare that any road or other means of communication is of military importance, and to prescribe

Column I	Column II
(*c*) tramways within municipal areas ; and (*d*) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation ; subject to legislation by the Indian Legislature in the case of any such railway or tramway which is in physical connexion with a main line or is built on the same gauge as an adjacent main line.	All Governors' Provinces except Assam
7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases; subject to legislation by the Indian Legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian Legislature.	All Governors' Provinces
8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.	,,
9. Fisheries.[1]	All Governors' Provinces except Assam
10. Co-operative Societies.	All Governors' Provinces
11. Forests, including preservation of game therein [2][and all buildings and works	[Bombay and Burma][3 and 4]

in respect thereof the conditions subject to which it shall be constructed or maintained, including the amount of expenditure to be from time to time incurred upon such construction and maintenance by the Governor-General in Council and by the Local Government respectively :

Provided that before prescribing under this rule the sums to be expended by any Local Government, the Governor-General in Council shall consult the Local Government or Local Governments concerned.' [Ed.]

[1] The subject was Transferred also in Assam in 1926. See p. 63 below.

[2] These words were inserted by Notification No. F.-975, dated 22 December 1922; see *Gazette of India* (1922), pt i, p. 1364.

[3] These words were substituted for the word 'Bombay' by Notification No. 519-V., dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[4] The following words were substituted by Notification No. F. 173-IV., dated 18 April 1932 ; see *Gazette of India, Extraordinary* (1932), p. 247 :

'Bombay, Burma and the North-West Frontier Province.'

	Column I	Column II
	executed by the Forest Department]; subject to legislation by the Indian Legislature as regards disforestation of reserved forests.[1]	[Bombay and Burma]
12.	Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.	All Governors' Provinces except Assam[2]
13.	Registration of deeds and documents; subject to legislation by the Indian Legislature.	All Governors' Provinces
14.	Registration of births, deaths, and marriages; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.	,,
15.	Religious and charitable endowments.	,,
16.	Development of industries, including industrial research and technical education.	,,
17.	Stores and stationery required for Transferred Departments; subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.	,,
18.	Adulteration of food-stuffs and other articles; subject to legislation by the Indian Legislature as regards import and export trade.	,,
19.	Weights and measures: subject to legislation by the Indian Legislature as regards standards.	,,
20.	Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.	,,

[1] The following was inserted as item IIA by Notification No. F. 290/18a/25, dated 16 July 1926; see *Gazette of India* (1926), pt i, p. 840:

	Column I	Column II
IIA.	Notifications under sub-section (1) of section 4 and declarations under sub-section (1) of section 6 of the Land Acquisition Act, 1894, when the public purpose referred to in the said sub-section appertains to a Transferred subject; subject to legislation by the Indian Legislature.	All Governors' Provinces

[Ed.]

[2] See p. 64 below.

Column I	Column II
[1][21. The following miscellaneous matters, namely : (*a*) regulation of betting and gambling ; (*b*) prevention of cruelty to animals ; (*c*) protection of wild birds and animals ; (*d*) control of dramatic performances and cinematographs ; subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.]	[1][Burma]
[1][22. Pounds and prevention of cattle trespass.][2]	[1][,,]

(2) *Transfer of additional Subjects to be administered by Ministers*

(i) *Report of the Reforms Enquiry Committee, 3 December 1924.*[3]

92. The division of functions between the Central and Provincial Governments and between the Reserved and the Transferred sides affects the functions both of the Provincial Legislatures and also of the Provincial Executive Governments. We propose, therefore, to refer to this question before dealing with our recommendations in regard to the Provincial Executive Governments. The main question is whether any existing Reserved subjects should be transferred to the administration of Ministers. The Local Governments, except in regard to the two subjects in Assam, to which we shall refer, and most of the Indian witnesses before us, though their arguments differ, have arrived at the same conclusion in this respect, namely, that no further subjects should be transferred to Ministers at the present time. We are all satisfied that no recommendations which we may make within the terms of our reference will satisfy all sections of political opinion. We are, however, agreed that this is not a complete answer to the question which has been referred to us. We, moreover, hold the view that a considerable volume of Indian opinion recognizes that the transfer of more subjects will effect a constitutional advance. We therefore consider that if there are subjects

[1] These items were added by Notification No. 519-V., dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[2] The following was inserted as item 23 by Notification No. F. 46/2/30, dated 28 August 1930 ; see *Gazette of India* (1930), pt i, p. 968 :

Column I	Column II
23. Control as defined by rule 10, of such members of all-India and provincial Services serving within the Province as are employed in departments dealing with Transferred subjects ; and control, subject to legislation by the Indian Legislature, of such public Services within the Province other than all-India Services as function in departments dealing with Transferred subjects.	All Governors' Provinces

[Ed.]

[3] *Report of the Reforms Enquiry Committee* (1924), pp. 76-80.

which can be transferred, without disturbing the balance of the Constitution and without affecting the basis upon which stable government depends, and which will afford a further field of activities to the Ministers, there is a *prima facie* reason for the transfer of such subjects, and it is in the light of this opinion that we have examined the list of Provincial subjects.

93. We now proceed to detail our recommendations in regard to the subjects mentioned in the Schedule of Provincial subjects annexed to the Devolution Rules. We have no recommendations to make for the transfer of any subjects which we have not mentioned; but as a general minor recommendation we recommend that the two Schedules should be examined and the lists should be rearranged on a more logical basis. We would point out, for example, that it is not possible by an examination of the list of Provincial subjects to ascertain which of those subjects are Reserved without a reference to the list of Transferred subjects, and again some of the minor subjects specifically mentioned, for example, coroners, seem already to be included within the scope of larger subjects.[1]

No. 5. *Education.* This subject is already a Transferred subject with certain limitations. The only limitations which we consider can be modified at present are those contained in clause (*b*) of the description, which relate to the portions of the subject which are subject to legislation by the Indian Legislature. These are divided into three heads. The third head relating to the Calcutta University and secondary education in Bengal is now nearly spent, and the restriction in it need not continue. The utility of the first head regarding the control of the establishment, etc., of new Universities is also in our opinion exhausted. The provision was framed about the time that the report of the Sadler Commission was under examination, and since then several new Universities have been established by Acts of local Legislatures. The exclusions from the Provincial subject contained in clause (*a*) of the description will also permit Universities of a central character in Governors' Provinces to be constituted by Acts of the Indian Legislature. We therefore recommend that the first head in clause (*b*) should now be deleted.[2] The second head must be retained as it relates to powers which could not validly be given to a University by the local Legislature.

No. 7. *Irrigation.* The description of the subject includes many items besides irrigation proper. A majority of us are of opinion that the whole subject is so closely connected with the Land Revenue as to be inseparable from it and further that in the case of large new projects it is essential that there should be control. We, therefore, recommend, by a majority, that the subject should not be transferred, but this recommendation is subject to the reservation that the question may be further considered in a particular Province where special circumstances may render it desirable to transfer any item included under this description.

[1] No action was taken by the Government of India on this recommendation. Memorandum submitted by the Government of India on 'The action taken upon the recommendations made in the Reforms Enquiry Committee Report'.—*Indian Statutory Commission Report*, vol. IV, p. 266. [Ed.]

[2] This recommendation was accepted and Item 5 in Part II of Schedule I, and in Schedule II to the Devolution Rules was amended by notification issued on 28 April 1926.—ibid., p. 268. [Ed.]

No. 8. *Land Revenue.* We recommend that no change should be made. We consider that this subject is the basis of the administration, and further that as the agency is the same as for Law and Order, the subject should only be transferred when Law and Order is transferred.

No. 12. *Fisheries.* This subject is transferred in all Provinces except Assam, and the Local Government is prepared for it to be transferred in Assam also. We recommend that this action should be taken.[1]

No. 14. *Forests.* This subject is transferred in Bombay and Burma, and, though other Local Governments object to the transfer, we find it difficult to assign any grounds of principle for opposing the transfer in other Provinces also. We recommend that it be transferred in other Provinces now unless any Local Government on examination of the position can make out a convincing case against the transfer in its own province.[2]

No. 15. *Land Acquisition.* The *prima facie* reasons for not transferring this subject are not very clear. A difficulty has, however, been pointed out to us in connexion with the acquisition of land for the Central Government. We ourselves see no objection to the transfer of this subject in so far as it relates to purely provincial land acquisition, but this is a matter on which the Provincial Governments should be definitely consulted before any action is taken.[3]

[1] This recommendation was accepted and an amendment of Schedule II of the Devolution Rules was notified on 29 April 1926.—ibid., p. 257. [Ed.]

[2] No decision was taken pending inquiry by the Statutory Commission.—ibid., pp. 258-60.

[3] The Government of India made the following observations regarding the action taken on this recommendation : The functions of the Executive Governments in India in regard to this subject may be stated to be as follows :

(i) The decision under section 4 of the Land Acquisition Act of 1894 that a notification shall be published to the effect that land in a particular locality is likely to be needed for a public purpose, and the decision that a declaration be made under section 6 that [that] particular land is needed for public purpose ;
(ii) the making of rules under section 55 for the guidance of officers in matters connected with the acquisition of land ; and
(iii) the actual process of acquisition.

Of these functions the Government of India considered that there was little doubt that the first is a power which should be possessed by both the Reserved and the Transferred sides of the Provincial Governments. Some Local Governments, for example the Governments of Bombay and the United Provinces, had in fact indicated in their replies that the decision in each case whether land should be acquired under the rules is left to the administrative department concerned which alone can judge of the necessity. The Government of India were of opinion that this practice scarcely corresponded to the actual wording of entry 15 of the list of Provincial subjects, and the point has now been cleared up by an alteration of the Schedule to the Devolution Rules so as to provide that the Government for the purposes of declarations under sections 4 and 6 of the Land Acquisition Act of 1894, is the Government in the Reserved or Transferred half according as the land is to be acquired for a Reserved or a Transferred Department. This amendment to Schedule II of the Devolution Rules was made by a notification issued on 16 July 1926.

In regard to the second function the Government of India considered that the power to make rules should be exercised by one side only of the Government, that is to say the Reserved side : they were therefore opposed to any transfer of that function.

As regards the third function there seemed to the Government of India to be no doubt that it should be exercised by one staff and that is the staff which is engaged upon the administration of land revenue. No transfer has accordingly been made of this function.—ibid., pp. 263-4. [Ed.]

No. 16. *Excise.* The subject is transferred in all Provinces except Assam. The Local Government does not object to, and we recommend, its transfer in that Province.[1]

No. 18. *Provincial Law Reports.* The subject is so intimately concerned with the High Courts that we consider a reference should be made to them before a final decision is arrived at, but, subject to this reservation, we ourselves see no reason why the subject should not be transferred.[2]

No. 26. Industrial matters included under the following heads, namely:

(*a*) factories ;
(*b*) settlement of labour disputes ;
(*c*) electricity ;
(*d*) boilers ;
(*e*) gas ;
(*f*) smoke nuisances ; and
(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing :

subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian Legislatures.

We have repeated the full description of this subject because our recommendations involve that the various heads of which it is composed should be treated differently. We recommend that (*d*) boilers, (*e*) gas, and housing from amongst the questions referred to in (*g*) should be transferred, those which are now subject to legislation by the Indian Legislature continuing to be so subject after they have been transferred.[3]

[1] This recommendation was accepted and an amendment of Schedule II of the Devolution Rules was notified on 29 April 1926.—*Indian Statutory Commission Report*, vol. IV., p. 261. [Ed.]

[2] The Government of India gave the following reasons for not accepting this recommendation :

' The majority of the High Courts and Local Governments were opposed to this recommendation which has not been accepted. The selection of judgements to be reported is a matter which intimately affects the administration of civil and criminal justice. So long as that subject remains Reserved the selection and publication of judgements binding on the lower courts should also remain Reserved.' —ibid., p. 264. [Ed.]

[3] The Government of India gave the following reasons for not accepting the recommendation :

' 1. *Boilers.* The recommendation for the transfer of " boilers " received some support, but the Local Governments were on the whole opposed to it. The subject is even more connected with " factories " than is the subject of " smoke nuisances ", which the Committee for that reason had thought should not be transferred. It was decided therefore not to accept this recommendation.

' 2. *Gas.* There was no objection to the transfer of " gas ", but since the other items under this head were retained on the Reserved side, it was decided that " gas " should not be transferred.

' 3. *Housing of labour.* Objection was raised to the transfer of this subject on the ground that housing questions are usually connected with the housing of the Depressed Classes and that subjects affecting those classes should remain reserved. In Bombay the only important scheme for the housing of the working classes in that Presidency had been carried out by the Development Department on the Reserved side, and a division of authority was considered undesirable. In Assam the housing of labour means for the most part the housing of labour in the tea gardens dealt with in connexion with " immigration " which is a Reserved subject. Moreover,

The main reason why we have decided that certain of the heads should be retained as Provincial Reserved subjects is that the Central Government is concerned in the administration of the heads retained as Reserved subjects and can maintain a control which would be lost if they were transferred. This is particularly the case in regard to factories, settlement of labour disputes and welfare of labour, including provident funds and industrial insurance. We are agreed that legislation on these matters should be conducted on uniform lines. It might be urged that it would be possible to secure this by the provision that they should be subject to legislation by the Indian Legislature. In our opinion, however, in these respects the Central Government must not only have power to legislate but must also have a corresponding power to carry out its laws. So long as the Central Government retains its powers of superintendence, direction and control over the administration of the Provincial Reserved subjects, the classification of these matters as Provincial Reserved matters may be supported, because the agency for carrying out the duties in connexion with these matters is a local agency. We are, however, looking forward to the time when further constitutional changes will be introduced in India, and we are anxious to avoid any decision at the moment which can be regarded as finally deciding that these heads are solely matters of provincial concern. In regard to the remaining matters which we recommend should be retained as Provincial Reserved subjects, smoke nuisances is a subject intimately connected with factories and electricity is a subject over which it is desirable that there should be an opportunity of central control, at any rate if developments on a large scale are proposed.

No. 27. *Stores and Stationery.* The subject is Transferred, but it is subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council. We recommend that this restriction be removed. This will necessitate the deletion of these words in the Schedules of Provincial and also of Transferred subjects.[1]

No. 43. *Provincial Government Presses.* We recommend that the question of whether this subject cannot be transferred should be examined.[2]

(ii) *Minority Report of the Reforms Enquiry Committee, 3 December 1924.*[3] It would thus appear that the only major subject recommended

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it was urged that the housing of labour could not in practice be dissociated from the welfare of labour, which again is dealt with on the Reserved side. On these grounds, it was decided not to accept this recommendation.'—ibid., p. 260. [Ed.]

[1] Effect was given to this recommendation by rules made by the Secretary of State in Council under item 27 of Part II of Sch. I and item 17 of Sch. II to the Devolution Rules prescribing that the purchase of imported stores and stationery shall be regulated by rules made by Local Government. These rules were published by a notification issued on 7 January 1926.—ibid., p. 264. [Ed.]

[2] The Government of India gave the following reasons for not accepting the recommendation : 'The majority of the Local Governments were opposed to the transfer of this subject on the ground that presses do work for Reserved Departments and their transfer might result in administrative inconvenience. In some Provinces the agency of the jails is used to a considerable extent for press work and it was urged that so long as jails remain a Reserved subject it would be unsuitable to transfer Government Presses.'—ibid., pp. 264-5. [Ed.]

[3] *Report of the Reforms Enquiry Committee* (1924), pp. 186-7.

for transfer is Forests.[1] One of our colleagues, Mr Jinnah, took up the position in the Committee that our inquiry had shown that the entire Constitution must be amended ; but compelled as he felt under the terms of reference to confining himself to the limits prescribed by them, he proposed on the assumption that the principle of Dyarchy must be maintained, that all subjects save and except Law and Order should be transferred, subject to such adjustment and further definition of Central and Provincial subjects as might be determined. With this opinion Dr Paranjpye was in full agreement. Sir Sivaswamy Aiyer agreed with Mr Jinnah's proposal, but he was not prepared to endorse the suggestion for the adjustment and definition of Central and Provincial subjects without further examination of details. Sir Tej Bahadur Sapru did not object to the transfer of any subject, but consistently with the views that he holds on the practical difficulties of working Dyarchy, he was not prepared to recommend the transfer of any subject. The majority of the Committee say in their Report that no recommendations within the terms of reference would satisfy Indian public opinion. We desire to express our complete agreement with this opinion, though we do not agree with some of the Members of the majority who hold that there is a section of Indian politicians which will recognize that a constitutional advance has been effected if more subjects are transferred, particularly when the list of recommended transfers referred to above is borne in mind. We think that the position has been correctly summed up in the letters of the Governments of the United Provinces and Bihar and Orissa. The former observe as follows :

'The transfer of all these subjects would not satisfy any section of Indian politicians. On this point the repeated declarations of prominent Liberals leaves no room for doubt. The opposition to the present Constitution would be in no way weakened ; on the contrary, it would be strengthened in the measure of success achieved ; while the capacity of the Government to resist further concessions would be correspondingly diminished.'

The Bihar and Orissa Government observe :

'Whatever defects exist are inherent in the system itself ; and this raises the main point which is the keynote of the discussion. Assuming that a further step in advance is contemplated, on what grounds is this step going to be taken ? In order to make Dyarchy more workable ? It is workable now, though creakily. The few minor remedies suggested above may cure a creak or two, but they will affect the larger questions in no degree whatsoever. The real issue is : Are we going to pacify at all costs our clamant critics ? If this is the object to be sought, not one of the few minor remedies suggested above will influence them one jot or tittle. They will be satisfied with nothing but the disappearance of Dyarchy and in its place the substitution of what is popularly known as Provincial Autonomy. That, as already emphasized, is the real issue which has to be faced.'

[1] The authors of the *Minority Report* referred (in pp. 185-6) to the ten subjects recommended by the majority for transfer, such as Fisheries, Land Acquisition, Provincial Law Reports and the like, and felt that subjects other than Forests recommended for transfer were in their judgement of minor importance. [Ed.]

III. Rules of Executive Business

(1) *Rules of the Executive Business of the Government of Bengal*[1]

Part I

General

2. Save as otherwise provided by rules 8 and 9, cases shall ordinarily be submitted by the Secretary in the department to which the case belongs to the Member or Minister in charge.

3. (1) Cases of minor importance shall ordinarily be disposed of by, or under the authority of, the Member or Minister in charge.

(2) The Secretary in each department shall submit to the Governor a weekly table showing particulars of all cases which have been disposed of by, or under the authority of, the Member or Minister in charge.

4. The following cases shall be submitted to the Governor after consideration by the Member or Minister in charge and before the issue of orders, namely :

(*a*) all proposed Resolutions on administration Reports ;
(*b*) all proposed circulars embodying important principles or changes ;
(*c*) all correspondence with the Secretary of State, the Government of India, the Calcutta High Court or any public association recognized by Government, except correspondence on routine matters ;
(*d*) all proposals involving legislation, the imposition of taxation, or the raising of a loan ;
(*e*) all proposed orders conveying censure or praise to gazetted officers ;
(*f*) all proposed orders affecting emoluments and pensions, and all orders on memorials, to the disadvantage of an officer of an all-India or provincial Service ;
(*g*) all proposed answers to questions to be asked in the Bengal Legislative Council ;
(*h*) all petitions in connexion with sentence of death passed in criminal cases ;
(*i*) all cases which the Member or Minister in charge considers to be of major importance ;
(*j*) any case or class of cases which the Governor specially directs to be submitted to him.

NOTE : For rule 4(f), see rule 5.

5. When under the Statutory Rules the Governor's personal concurrence is required to any proposal, the Secretary in the department concerned shall be responsible for bringing the fact to the notice of the Governor.

[1] Rules made under section 49(2) of the Government of India Act, 1919, by His Excellency the Governor of the Presidency of Bengal. These rules are given here as a specimen of the Rules of Executive Business of the Governments of the different Provinces, which were substantially on the same lines. [Ed.]

NOTE: The Statutory Rule principally concerned is rule 10 of the Devolution Rules.[1]

Thus rule 5 of the Rules of Executive Business governs rule 4(f) and rule 26.

6. All letters received from the Secretary of State or Government of India (except letters of a routine or unimportant nature) shall, on receipt, be submitted by the Secretary for perusal to the Governor, and, on return from him, to the Member or Minister in charge.

7. Where it is proposed in any department to negative the recommendations, or to overrule the decision of the Board of Revenue, a Commissioner of a division or a head of a department, in any matter of importance, the papers shall be submitted to the Governor before any orders to that effect are issued :

Provided that this course need not be taken in either of the following cases, namely :

(*a*) where the Local Government, while differing from a subordinate authority, express their view in the form not of an order but of a suggestion ; or

(*b*) where the proposals of a subordinate authority contravene standing orders or accepted principles, and the reply of the Local Government merely refers to such orders or principles.

8. Any case may, at any stage, if the Secretary in the department to which the case belongs thinks fit, be submitted by him to the Governor :

Provided that when a case is so submitted to the Governor, the Member or Minister in charge shall be at once informed of the fact by the Secretary.

9. Cases of a routine or unimportant character may be disposed of by the Secretary : provided that a weekly list of all cases so disposed of shall be submitted to the Member or Minister in charge. The Member or Minister may send for any case entered in such list, and may take any action which he considers necessary with reference to it.

10. No case shall be referred by one Member or Minister to another Member or Minister personally for opinion without the previous consent of the Governor.

Proviso.—This rule does not apply to inter-departmental references made under rules.

* * *

11. . . . Every . . . order or proceeding which issues from a Reserved Department shall be expressed to be made or issued by the Governor in Council ; and every order or other proceeding which issues from a Transferred Department shall be expressed to be made or issued by the Governor acting with his Minister, and the name of the Minister in charge of the department together with his designation shall be given on the margin.

12. Whenever it is proposed in any department other than the Legislative Department—

(1) to issue any statutory rule, notification or order, or

(2) to sanction, under a statutory power, the issue of any rule, by-law, notification or order by subordinate authority, or

[1] See p. 102 for the text of the Rule. [Ed.]

(3) to submit to the Secretary of State or to the Government of India any statutory rule, notification or order, for issue by them

a draft of the same shall, except in such cases as the Governor may otherwise direct, be referred to the Legislative Department for opinion as to whether it is strictly within the power conferred by the Legislature and is in proper form as regards wording and arrangement, and for revision, if necessary, in these respects.

Part II

Cases arising in Reserved Departments

* * *

15. (1) Any Member may ask to see any papers in any other Reserved Department ; he may also ask to see papers in a Transferred Department if they are required for the disposal of a case in his department.

* * *

16. All letters from the Secretary of State or the Government of India (except letters of a routine or unimportant nature) received in a Reserved Department shall, after they have been seen by the Governor or Member in charge, be circulated to the other Members.

Bringing of Cases belonging to Reserved Departments before Meetings of the Council

17. (1) Appointments shall be classified in—

List I, comprising appointments to which the Governor will nominate direct ;

List II, comprising appointments to which the Governor will nominate on the recommendation of the Member in charge ;

List III, comprising appointments to which the Member in charge will nominate subject to the approval of the Governor :

Provided that, if the Governor has directed, by general or special order, that the Member's recommendation in any case entered in List III need not be submitted to him, the Secretary shall regard the Member's nomination as a nomination made with the approval of the Governor.

(2) These lists are subject to modification from time to time by general or special order of the Governor.

(3) No nomination to an appointment shown in Lists I and II, except one of a purely temporary character, shall be given effect to without the concurrence of a majority of the Council.

18. (1) All cases which the Governor considers to be of sufficient importance shall be brought before a meeting of the Council, after circulation of papers and before the issue of orders :

Provided that if the Governor considers any such case to be so urgent as to necessitate the immediate issue of orders, he may direct the issue of orders at once, and when orders have been issued the papers shall, without avoidable delay, be circulated and brought before a meeting of the Council.

* * *

19. The Governor, if he concurs with the Member in charge, will determine whether and when a case shall be brought before a meeting of the Council, and also whether the paper shall be further circulated before action is taken upon them :

Provided that, if it is proposed to legislate, the paper shall, unless the Governor otherwise directs, be circulated to all the Members and brought before a meeting of the Council before the case is discussed at a meeting of the Executive Council and Ministers sitting together.

20. If in any case the Governor does not concur with the Member in charge, the papers of the case shall either—

(*a*) be circulated to all the Members and then be brought before a meeting of the Council ; or

(*b*) if the Governor so directs, be at once brought before a meeting of the Council :

Provided that it shall not be necessary to bring a case before the Council, if on further consideration, the Member in charge accepts the opinion of the Governor or vice versa.

* * *

23. (1) When a case is brought before a meeting of the Council the Secretary in the department to which the case belongs, and if the case concerns another Reserved Department, the Secretary in that department also, if specially required to do so, shall attend.

* * *

24. When any matter has been discussed in the Council, any Member who has taken part in the discussion may record a minute on the subject.

Part III

Cases arising in Transferred Departments

25. The business of the Transferred Departments shall be allotted to the Minister in such manner as the Governor may, from time to time, direct.

26. All orders for the posting of officers of an all-India Service and all appointments of officers of an all-India or Provincial Service must be submitted to the Governor.

Note : See rule 5.

When it is proposed to appoint to a post in a Transferred Department an officer serving in a Reserved Department, the Appointment Department shall first be consulted, and its opinion shall be submitted with the papers to the Governor.

Note. When the vacancy concerns the Indian Civil Service or the Bengal Civil Service the Administrative Department will (if necessary after consulting the Appointment Department whether the officer can be spared from the Reserved Department where he is serving) submit the case with the recommendation of the Minister to His Excellency for his personal concurrence. . . .

His Excellency will, in such a case, ordinarily consult the Minister in charge of the Administrative Department before passing orders. . .

27. (1) Every case the subject of which concerns another Transferred Department shall, unless it is one of extreme urgency, be referred for consideration to such other department before it is submitted to the Governor and before any orders are issued.

(2) If the departments concerned are not in agreement, and if they are in charge of different Ministers, the case shall be submitted by the Minister in charge of the department to which it belongs to the Governor.

(3) If the departments are under different Ministers, and there is a question as to which department the case belongs to, such question shall be referred for decision to the Governor, and action will then be taken in the department to which he has allotted the case.

28. Before it is decided to initiate legislation concerning only a Transferred Department, the case shall, unless the Governor otherwise directs, be circulated to all the Ministers for opinion before it is discussed at a meeting of the Executive Council and Ministers sitting together under rule 39.

29. (1) A Minister may ask to see papers in any other department, whether Reserved or Transferred, if they are required for the disposal of a case in his department.

(2) When such request is made, it shall be dealt with under the orders of the Member or Minister in charge.

30. The Finance Member may ask to see any papers from any Transferred Department in which financial consideration is involved. When such a request is made, it shall be dealt with under the orders of the Minister in charge.

31. On receipt of any papers called for under rule 30, the Finance Member may request that the papers with his note on them should be submitted to the Governor for orders, and they shall be submitted accordingly by the Minister in charge.

32. When a case has been submitted to the Governor, he may direct that any Minister other than the Minister in charge shall be consulted or that the case shall be circulated to all the Ministers. The Governor may also direct that after such circulation, or without circulation, the case shall be discussed at a meeting of the Governor and all the Ministers. After such discussion the Governor shall pass such orders on the case as he thinks fit.

* * *

Part IV

Cases affecting both Reserved and Transferred Departments

34. If the subject of a case in a Reserved Department concerns a Transferred Department or if the subject of a case in a Transferred Department concerns a Reserved Department, the case shall, unless it is of extreme urgency, be referred for consideration to such other department before any orders are issued.

35. If all the departments concerned are in agreement with reference to the case, it shall be proceeded with under Part II or Part III of these rules, as the case may be.

36. If no issue has been raised as to the department to which the case

belongs, but the departments concerned are not in agreement regarding any point arising in the case, the Member or Minister in charge of the department to which the case belongs shall submit it for the orders of the Governor.

37. If it is doubtful to which department any case belongs, or if this question is at issue, the Member or Minister before whom the case is pending shall submit the point for the orders of the Governor.

38. (1) If any action taken in a Reserved Department affects a Transferred Department, or if any action taken in a Transferred Department affects a Reserved Department, the Minister or Member in charge of the department affected may ask to see the papers of the case.

* * *

(3) On receipt of any papers asked for under this rule the Minister or Member who called for them may submit the case to the Governor with any observations which he may desire to make.

39. It shall be within the discretion of the Governor to direct that a case shall be discussed at a meeting of the Executive Council and Ministers sitting together :

Provided that the Governor shall so direct—

(*a*) in all cases substantially affecting the administration both of a Reserved and of a Transferred Department on which there is a difference of opinion between a Member of the Executive Council and the Minister concerned ; and

(*b*) in all cases involving legislation, before such legislation is introduced in the Legislative Council.

Part V

Proceedings of the Meetings of the Executive Council with Ministers

* * *

41. If the case discussed at a meeting of the Executive Council and Ministers sitting together concerns only a Reserved or a Transferred Department, it shall after such discussion be disposed of in the ordinary way by the Governor in Council or the Governor acting with his Minister or Ministers, as the case may be. If the case concerns both a Reserved and a Transferred Department, the Governor shall direct in which department the decision as to the action to be taken shall be given, and in doing so he may, if he thinks fit, indicate the nature of the action which should in his judgement be taken. The decision will thereafter be arrived at by the Governor in Council or by the Governor and Minister or Ministers according as the department to which it has been committed is a department dealing with Reserved or a Department dealing with Transferred subjects.

Part VI

Legislation

42. Save as otherwise provided by rule 45, the Legislative Department is not, in respect of legislation, an originating or initiating depart-

ment, and its proper function is to put into technical shape projects of law of which the policy has been approved.

* * *

45. Nothing in the foregoing rules shall apply to measures for the codification of the substantive law or for consolidation pure and simple of existing enactments, or to legislation of a formal character such as that involved in ' Repealing and Amending ' and ' Short Titles ' Bills. Such legislation may be initiated in the Legislative Department, which shall send a copy to the department to which the case belongs, for consideration as an administrative measure. The department to which the case belongs shall forthwith make such inquiries as it thinks fit, and shall send to the Legislative Department its opinion thereon, together with a copy of every communication received by it on the subject. Thereupon the Legislative Department shall submit the Bill to the Governor for orders, and, if the Governor so directs, take steps for its introduction in the Legislative Council.

* * *

Part VII

Miscellaneous

Observance of, and Departure from, Rules

52. (1) The Secretary in each department shall be responsible for the careful observance therein of these rules.

(2) When a Secretary considers that there has been any departure from these rules he shall personally bring the matter to the notice of the Governor.

53. The Governor may, from time to time, if he thinks fit, permit any departure from these rules within the limits imposed by the Government of India Act and the Statutory Rules made thereunder.

Annexure

(Rule 17 of the Rules of Executive Business)

List I

Nominations to be made by His Excellency the Governor direct

Appointments

1. Member, Board of Revenue.
2. Commissioners of Divisions.
3. Civil Secretaries to Government in Reserved Departments.
4. Legal Remembrancer.
5. Inspector General of Police.
6. Commissioner of Police, Calcutta.
7. Inspector General of Prisons.
8. Famine Commissioner or Additional Commissioner of a Division under section 72 of the Famine Code.
9. Director of Land Records.

10. Secretary to the Government of Bengal in the Legislative Department and Secretary to the Bengal Legislative Council.
11. Assistant Secretary to the Government of Bengal in the Legislative Department and Assistant Secretary to the Bengal Legislative Council.
12. Chief Engineer and Secretary to Government in the Irrigation Department.
13. Chairman of the Commissioners for the Port of Calcutta.
14. Deputy Chairman of the Commissioners for the Port of Calcutta.
15. Chairman of the Commissioners for the Port of Chittagong.
16. Vice-Chairman of the Commissioners for the Port of Chittagong.
17. Political Agent, Tripura State.

N.B. The procedure in making appointments in List I is as follows : As soon as it is known that a vacancy in List I appointment is likely to occur, the administrative department will inform His Excellency (through the Appointment Department), if the vacancy concerns the Indian Civil Service or the Bengal Civil Service ; but neither the Appointment Department nor the administrative department will make any remark beyond stating that a vacancy is likely to occur. His Excellency will then either—

(*a*) make an appointment subject to the concurrence of the Members of Council under rule 17(3), after obtaining such advice as he desires, or

(*b*) ask the administrative department to record their opinion regarding filling up of the vacancy. If the vacancy concerns the Indian Civil Service or the Bengal Civil Service, the file will be submitted to His Excellency through the Appointment Department. Any difference of opinion between the Appointment Department and the administrative department will be brought to the notice of His Excellency by the Chief Secretary. His Excellency will in such a case ordinarily consult the Member in charge of the administrative department before passing orders.

In case (*a*), any written opinions recorded will be retained by His Excellency and will not be placed on the Secretariat file. In case (*b*), the notes recorded will be kept confidentially in the custody of the Chief Secretary or of the Secretary in the administrative department concerned, and will not be placed in the file in which the formal appointment orders are issued.

List II

Nominations to be made by His Excellency the Governor on the Recommendation of the Member in Charge

Appointments	Remarks
APPOINTMENTS UNDER THE APPOINTMENT DEPARTMENT	
General Administration	
1. Appointment of officers of the Bengal Civil Service (Executive)— (1) To listed posts	

Appointments	Remarks
(2) To non-listed posts, ordinarily reserved for members of the Indian Civil Service	Appointments for more than six months require the sanction of the Government of India
Police	
1. Deputy Inspector General of Police	
Irrigation Department	
1. Superintending Engineers, Irrigation Circles	
Judicial	
1. Appointment of officers of Bengal Civil Service (Judicial)—	Recommendation to be made after consultation with the High Court and Judicial Member
(1) To listed posts of District and Sessions Judge	
(2) To non-listed posts of District and Sessions Judge	Appointments for more than six months require the sanction of the Government of India
APPOINTMENTS UNDER OTHER DEPARTMENTS	
Judicial	
1. Deputy Legal Remembrancer	Recommendation to be made after consultation with the Appointment Department
2. Administrator-General and Official Trustee	

N.B. When the administrative department has been consulted with reference to an appointment in this list which concerns the Indian Civil Service, or the Bengal Civil Service the case will be submitted to His Excellency by the Appointment Department. Any difference of opinion between the Appointment and the administrative department will be brought to the notice of His Excellency by the Chief Secretary. His Excellency will ordinarily consult the Member in charge of the administrative department before passing orders.

List III

Nominations to be made by the Member in Charge subject to the Approval of His Excellency the Governor

Appointments	Remarks
Appointment	
1. Deputy Secretaries to the Local Government in Reserved departments	
2. Under Secretaries to the Local Government in Reserved departments	
3. Assistant Secretaries to the Local Government in Reserved departments	

Appointments	Remarks
Appointment	
4. First appointment of Deputy and Sub-Deputy Collectors	
5. Deputy Superintendents of Police (direct appointment)	
6. Assistant Commissioners of Police, Calcutta	
7. Assistant Superintendents of Police (local recruitment)	When there is any question whether any vacancy should be filled by a member of the Indian Civil Service, the Bengal Civil Service or an outsider, the Appointment and Judicial Departments will consult together
8. Presidency Magistrates, if members of the Indian Civil Service or Bengal Civil Service	
9. Secretary to the Board of Revenue	Recommendations to be made after consultation with the Revenue Department
10. Settlement Officers of major settlements	
11. Civilian managers of estates	
Judicial	
1. Judges of the Small Cause Court, Calcutta	The High Court is consulted when it is proposed to appoint a member of the Bengal Civil Service (Judicial)
2. Deputy Administrator-General and Deputy Official Trustee	
3. Presidency Magistrates not being members of the Indian Civil Service or the Bengal Civil Service	When there is any question whether any vacancy should be filled by a member of the Indian Civil Service or an outsider, the Appointment and Judicial Departments will consult together
Revenue	
1. Appointment of Europeans or Anglo-Indians as Managers of wards and attached estates and as tutors and guardians	
2. Appointments under the Court of Wards on pay exceeding Rs400 a month	
3. Protector of Emigrants and Superintendent of Emigration	
Forests	
1. Provincial Forest Service (nomination for deputation to Forest Research Institute and College, Dehra Dun, and promotion of Rangers, promotion of members from the Provincial to the Indian Forest Service)	
Education	
1. Inspectors of European Schools	
2. Head Master, Victoria Boys' School, Kurseong	
3. Principal, Dow Hill Girls' School, Kurseong	

Appointments	Remarks
Commerce 1. Registrar of Joint Stock Companies, Bengal 2. Chief Inspector of Factories, Bengal *Irrigation* 1. Personal Assistant to Chief Engineer 2. Assistant Secretary to Government *Public Works* 1. Superintendent, Governor's Estates, Bengal *Marine* 1. Agent for Government Consignments 2. Assistant Shipping Master, Kidderpore 3. Nominated Commissioners of the ports of Calcutta and Chittagong *Political* 1. Bengali Translator to Government	

(2) *Report of the Reforms Enquiry Committee, 3 December 1924*[1]

102. Many suggestions have been made that the rules of Executive Business made by the Governors of the various Provinces under sub-section (2) of section 49 of the Act are not in conformity with the intention of the Constitution. By the courtesy of the Governors of all Provinces we have been enabled to examine the rules which have been made, and we only propose to refer to points where we consider that the rules can be generally amplified with advantage.

(*a*) We think that, where this is not already the case, the rules might, with advantage, provide that a Member or a Minister in regard to any case in his own department should be able to make a recommendation to the Governor that it should be considered before the joint Cabinet or before that side of the Government which is directly concerned in it.

(*b*) Complaints have been received that the rules under which a right of access to the Governor is accorded to Secretaries and to heads of departments have not worked well on the Transferred side. As a matter of fact these rights are not confined to that side. Under the present Constitution it is not intended that the Governor shall restrict his functions to those of a constitutional Governor. It is only therefore proper that the Secretaries to Government and such permanent heads of the departments as are so privileged should acquaint the Governor with the actual course of administration. It should be borne in mind that the Secretaries are Secretaries to Government and not Secretaries to the individual Minister or Member of Council. To remove the suspicion that this right is capable of being used to influence the Governor behind the back

[1] *Report of the Reforms Enquiry Committee* (1924), pp. 85-6.

and without the knowledge of the Minister we recommend that, where this is not already the case, a rule should be included in the Rules of Business requiring the Secretary in the department or other officer with a right of direct access, to inform his Minister of every case where there is a difference between them and of all other important cases which he proposes to refer to the Governor.

(*c*) In the present connexion we have been informed that in a certain Province the Ministers had to ask for an interview with the Governor before it was accorded. We understand that such a procedure is exceptional, and we believe that a special day in each week is generally set apart by the Governors for interviews with their Ministers. This seems to us the correct procedure. Any such arrangement would, of course, be in addition to the right of each Minister to ask for an interview with the Governor on special occasions.

IV. Joint Responsibility of Ministers in Charge of Transferred Subjects

(1) *Report of the Reforms Enquiry Committee, 3 December 1924*[1]

98. . . . The difficulties in the way of establishing joint responsibility in India are doubtless great. It is, for example, difficult to select Ministers from a single well-organized party, and this is particularly so where the main Hindu and Muhammadan communities are keenly divided in a local Council or where there are other communal differences of an acute character. Joint responsibility practically also involves the recognition of a Chief Minister, and the difficulties to which we have just adverted are thereby enhanced; but we do not wish to suggest that these difficulties are insurmountable. We are convinced that joint responsibility of the Ministers is of the very essence of the present Constitution. The object of the Reforms was not merely to train Indians in administration; that could have been secured by other means. The object was to introduce an approach to cabinet government for the Transferred side of the Administration, and until this is accomplished, there will be, in our opinion, little training in responsible government. It has been suggested that sub-section (3) of section 52 of the Act implies that the Governor on the Transferred side will act on the advice of the individual Minister, but we do not subscribe to this view. There are, however, some provisions in the Rules under the Act and also in the Instrument of Instructions which suggest that the Governor in relation to Transferred subjects should be guided by the advice of the individual Minister. Rule 10 of the Devolution Rules[2] and clause III of the Instrument of Instructions[3] are examples of the provisions to which we are referring. We suggest that the Government of India should examine all the Rules and the Instrument of Instructions in order that, where necessary, they may be amended with the object of indicating clearly that the ideal is that the administration on the Transferred side should be conducted by a jointly responsible Ministry.

[1] Pp. 82-3.
[2] See p. 102. [Ed.]
[3] See p. 54. [Ed.]

(2) *Minority Report of the Reforms Enquiry Committee, 3 December 1924*[1]

It was pointed out to us by the majority of the ex-Ministers whom we examined that the Ministers were dealt with by their Governors individually and not collectively. In other words, the point raised was that there were Ministers but no Ministries. The evidence of Mr Chitnavis and Rao Bahadur Kelkar of the Central Provinces, of Lala Harkishen Lal of the Punjab, and of Sir P. C. Mitter of Bengal shows that not only did the Governors act with their Ministers separately but the latter, in some Provinces at any rate, themselves did not observe the convention of joint responsibility. On the other hand, the evidence of Mr Chintamani shows that the late Ministers in the United Provinces prescribed for themselves a different course of conduct consistent with the true constitutional position. We recognize that sometimes a Governor may find it difficult to form a homogeneous Ministry, but in our opinion there should be no insuperable difficulty for a Governor to appoint, from different groups, Ministers who would agree to work upon a footing of joint responsibility. . .

* * *

As regards the question of joint responsibility of the Ministers we suggest that section 52 (3) itself should be modified so as to secure this end. We would not leave it to the growth of a convention on the subject. We desire to say that the Cabinet system with a Chief Minister should be definitely provided for. It has been tried successfully in Madras and we do not agree with the suggestion of the majority that the difficulties in the way of establishing joint responsibility in India are great and that they are enhanced where the two main communities, Hindu and Mohammedan, are keenly divided in a local Council. We think that in every Council there are at least a certain number of Hindus and Mohammedans who share common political aims and ideals and we believe that the enforcement of the principle of joint responsibility will promote common political action and help to strengthen political parties in Councils and outside.

(3) *Action taken upon the Recommendations made in the Reforms Enquiry Committee Report (1924)*[2]

The Government of India have no hesitation in accepting the principle of joint responsibility of the Ministry as the ideal, but apart from the difficulties mentioned in paragraph 28 of the Committee's Report, the conception of Cabinet responsibility, as it obtains in England, is, in their opinion, one which is incapable of translation into regulations and any attempt to do so would be likely to prevent rather than to foster its development.

* * *

It has been decided on these grounds that no amendment should be made either in Devolution Rule 10 or in the Instrument of

[1] *Report of the Reforms Enquiry Committee* (1924), pp. 154-5 and 190.
[2] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report* (1924), vol. IV, pp. 245-6.

Instructions or elsewhere for the purpose of giving effect to this recommendation.

(4) *Report of the Indian Statutory Commission, 12 May 1930*[1]

Ministers have worked together with far less friction than might have been expected in circumstances in which they were, more often than not, drawn from different groups or communities, and in which the taking of office has seldom been conditioned by any understanding that the principle of joint responsibility would be observed. This principle, it is true, was recognized by the Justice Party Ministries in Madras ; and we may instance, by way of further examples, the resignation of a United Provinces' Minister, Pandit Jagat Narain, in company with the Education Minister, Mr Chintamani, on a matter arising in the education department ; or the acceptance by Mr Chakravarti, in August 1927, of the Bengal Legislature's vote of no confidence in Mr (now Sir A. K.) Ghuznavi as a vote of no confidence in the Ministry to which they both belonged. It is curious to note that the Bengal Legislature refused to recognize the principle of joint responsibility accepted by the Ministers themselves, and insisted on carrying a second separate motion against Mr Chakravarti, in spite of his statement that he would resign as a consequence of the vote against Mr Ghuznavi.

V. Joint Deliberation between Members of the Executive Council and Ministers

(1) *Report of the Joint Select Committee of Parliament on the Government of India Bill, 17 November 1919*[2]

There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the Executive Council and the Ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects ; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a Reserved subject should be recorded separately by the Executive Council, and in respect of a Transferred subject by the Ministers, and all Acts and Proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case

[1] *Indian Statutory Commission Report* (1930), vol. I, p. 212.

[2] *Report of the Joint Select Committee of Parliament on the Government of India Bill* (ordered to be printed on 17 November 1919), pt i, cl. 6.

of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration ; and it will equally be his duty to see that a decision arrived at on one side of his Government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous. The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction.

(2) *Report of the Reforms Enquiry Committee, 3 December 1924*[1]

96. . . . It was intended that Dyarchy should be worked as Dyarchy and not as a unitary Government ; that there should be joint meeting for the purposes of informing one side of the action being taken on the other side of the Government and for mutual influence and discussion ; but that it should be clear which part of the Government is responsible for any decision taken. The evidence appears to indicate that Dyarchy in different Provinces, and sometimes at different times in the same Province, has been worked in very different ways. In order to secure the working of Dyarchy in the manner intended, there should in our opinion be a definite rule under the Act, that is, in the Devolution Rules, which would reinforce the convention that questions of importance should be considered by the Governor sitting at a joint meeting with the Executive Councillors and the Ministers. The decision would be arrived at on the side of Government concerned with the subject. In a case of doubt the Governor would decide, as at present, which side was concerned, and the Governor would also decide which cases were of importance.

(3) *Minority Report of the Reforms Enquiry Committee, 3 December 1924*[2]

Mr Montagu in his speech of 5 June 1919 on the motion for the second reading of the Government of India Bill in Parliament put the position more briefly as follows :

'If Reserved subjects are to become Transferred subjects one day, it is absolutely essential that during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the Bill provides, in one Government.'

* * *

The conclusions which we have arrived at on this point are (1) that the system of joint deliberation between the two halves of the Government in the spirit of the recommendations of the Joint Select Committee

[1] *Report of the Reforms Enquiry Committee* (1924), p. 81.
[2] ibid., pp. 157-60.

has been followed only in Madras and Bengal ; (2) that in other Provinces it has either not been followed at all or, if followed, it has not been followed consistently or to the extent and in the manner contemplated by the Joint Select Committee or laid down in the Instrument of Instructions ; (3) that in some Provinces at any rate Ministers have not been satisfied with the manner in which it has been followed. Much as we appreciate the wisdom of the recommendations of the Joint Select Committee and of the observations of Mr Montagu, which we have quoted above, we feel that in the best of circumstances the habit of joint deliberation between the two halves of Government, good as it may be so far as it goes, cannot, without the element of common responsibility, lead to efficiency in the administration nor always to harmonious relationship between Members of the Executive Council and the Ministers. Indeed it seems to us that at times it is apt to weaken the position of the Ministers *vis-à-vis* the Legislative Councils and the electorates in relation to Reserved subjects, more particularly when there is occasion for difference of opinion in regard to questions of policy between the Legislature and the Executive. We are anxious to safeguard ourselves against conveying the impression that given dyarchy to work, we do not appreciate the value of joint deliberation between the two halves of the Government, but we maintain that it is an inherent defect of the present Constitution that the Government should be divided into two halves.

(4) *The Action taken upon the Recommendations of the Reforms Enquiry Committee (1924)*[1]

In so far as the Committee endorsed the principle of joint deliberation, their recommendation does not perhaps go further than the recommendations of the Joint Committee of Parliament on the Government of India Bill in paragraph 5 of their Report, and the instructions contained in paragraph 4 of the Instrument of Instructions to Governors.[2] The main point in the Committee's recommendations was that the provisions should be more definite, and this was the reason for their suggestion of the insertion of a rule in the Devolution Rules. Under the Committee's proposals, the Governor was to have a discretion, but this discretion was to be merely that of deciding which cases were of importance.

The recommendation may be read with recommendations Nos. 18 and 20, the three recommendations jointly covering the following proposals :

(1) that the Governor should be compelled by rule to refer all important cases for consideration to both sides of the Executive ;
(2) that his Instructions should be so redrafted as to limit his powers of dissenting from his Ministers, and
(3) that he should make provisions in his rules of executive business to enable any member of their half of the Executive to require any case to be brought up for consideration either by both halves of the Executive sitting together or by all the members of that half of the Executive to which the case appertains.

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 243-4.

[2] See p. 54 above. [Ed.]

It has been decided to take no action upon any of these recommendations pending the inquiry to be made by the Statutory Commission, since it was felt to be inexpedient, pending that inquiry, to stereotype local practice. When Parliament decided in 1919 that the device commonly known as dyarchy was the best, and indeed the only available method of endowing provincial Governments forthwith with a partially responsible character, the basic postulate was involved that the responsibility of Ministers should be confined to the administration of the subjects transferred to their control, and further that, for so long at all events as the Government of India Act retains its present form, their responsibility even in the sphere entrusted to their charge should be subject to the overriding power of the Governor, if circumstances required it, to disregard a Minister's advice. The Joint Select Committee, upon whose advice these fundamental postulates were affirmed, recognized the desirability of tempering their rigidity in their practical application and with this object, partly by alteration in the text of the Statute itself, partly by the terms of the rules framed under it, partly by indication of policy in their Report and chiefly by the terms of the instructions issued with their approval under the Royal Sign Manual, they secured some softening of the outline of the purist conception of Dyarchy. In certain Provinces the Governors, following the lead given by the Joint Select Committee, have adopted the principle of joint consultation for almost all purposes, and it has been claimed that thereby results have been attained which are not inferior to those attained in other provinces where the principle of pure Dyarchy has been more strictly applied. The discretion to follow a like course, should it seem desirable to them, rests equally with the other Governors. At the same time in a period which is admittedly one of transition it has seemed desirable to avoid the prescription of a rule and to leave the discretion of the Governors unfettered, not only because it seems to be proper that those who think it possible to give effect to the undoubted implications of the Statute should not be prevented from doing so, but also in order that in the time that remained before the appointment of the Statutory Royal Commission every possible experiment might be tried within limits which Parliament itself determined not to make too rigid.

On these grounds it has been decided that until the inquiry of the Statutory Commission has been held, no changes should be made either in the law or in the Instructions which would tend to hinder natural development in the several Provinces whether in the direction of Dyarchy or of a unitary form of government to the utmost extent compatible with the basic principles of the existing constitution.

(5) *Report of the Indian Statutory Commission, 12 May 1930*[1]

231. The success achieved in avoiding conflict within the Government itself was attained by encouraging its operation as a single whole, rather than by keeping separate the two component parts. The practical impossibility of conducting Government—at all events so far as major questions are concerned—in watertight compartments was in any event bound to produce a strong tendency in this direction, and this natural

[1] *Indian Statutory Commission Report* (1930), vol. I, par. 231.

development was generally fostered by Governors. It became the widespread practice for all questions of importance to be discussed at joint meetings of the two sides of Government and for the decision to be taken thereat, although it was recognized that constitutional responsibility for the decision rested only with part of those present. Separate meetings of the Executive Council seem to have been comparatively infrequent, and separate meetings of the Governor and Ministers alone together rarer still. There was, of course, in any case, nothing to encourage the holding of separate meetings of all the Ministers together as a ' Ministry ' in those instances in which there had been no development of the sense of joint responsibility among Ministers. As might be expected, the precise extent to which the policy of unified consultation was carried out has varied somewhat from Province to Province and from time to time in the same Province; but the general development has undoubtedly been of the character stated above.

VI. Overlapping of Reserved and Transferred Subjects

(1) *Devolution Rules*

(Rules under Section 45A of the Government of India Act, 1919)

7. If any doubt arises as to whether any matter relates to a Reserved or to a Transferred subject, the Governor shall decide the question, and his decision shall be final.

* * *

9. (1) When a matter appears to the Governor to affect substantially the administration both of a Reserved and of a Transferred subject, and there is disagreement between the Member of the Executive Council and the Minister concerned as to the action to be taken, it shall be the duty of the Governor after due consideration of the advice tendered to him, to direct in which department the decision as to such action shall be given ; provided that, in so far as circumstances admit, important matters on which there is such a difference of opinion shall before the giving of such direction be considered by the Governor with his Executive Council and his Ministers together.

(2) In giving such a direction as is referred to in sub-rule (1), the Governor may, if he thinks fit, indicate the nature of the action which should in his judgement be taken, but the decision shall thereafter be arrived at by the Governor in Council or by the Governor and Minister or Ministers, according as the department to which it has been committed is a department dealing with Reserved or a department dealing with Transferred subjects.

(2) *Memorandum by Sir K. V. Reddy to the Reforms Enquiry Committee, 6 August 1924*[1]

As Minister for Development from 17 December 1920 to 17 November 1923, I was in charge of the following subjects :

(1) Agriculture
(2) Civil Veterinary Department

[1] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, p. 21.

(3) Co-operative Societies
(4) Development of Industries, including industrial research and technical education
(5) Fisheries
(6) Weights and Measures.

It will be noticed that I was a Minister for Development without the Forests which in this Province is a Reserved subject. I was the Minister for Agriculture minus Irrigation, again a Reserved subject, which has been in the hands of the Law Member while Public Works Department whose entire staff also looks after Irrigation is a Transferred subject under another Minister. As Minister of Agriculture I had nothing to do with the administration of the Madras Agriculturists' Loans Act or the Madras Lands Improvements Loans Act. An attempt made by me at one time, only to make a few suggestions regarding the administration of these Acts, was considered *ultra vires* and a serious encroachment upon the rights of the Reserved half of the Government on the ground that no file could be started by a Minister in any of the Reserved subjects, the initiative being always with the Members of the Executive Council in all matters connected with Reserved subjects. Famine Relief of course could not be touched by the Minister for Agriculture. The efficacy and the efficiency of a Minister for Agriculture without having anything to do with Irrigation, Agricultural Loans, Land-Improvement Loans, and Famine Relief is better imagined than described.

Then again I was a Minister for Industries without Factories, Boilers, Electricity and Waterpower, Mines or Labour, all of which are Reserved subjects. Forests which supply so much material for Industries is also a Reserved subject in Madras. How a Minister for Industries can co-ordinate his work in industrial development with a ban not to touch any of the subjects so intimately connected with it, and without the least power to have a hand in them it is impossible to conceive. At the suggestion of the Governor and in fact on his command I once prepared a note with a view to give certain powers of initiative now enjoyed by District Collectors and the Board of Revenue to be transferred to the Director of Industries in the matter of mining concessions. Down came the thundering bolt of the Finance Member smashing my note to pieces on the solitary ground that a Minister cannot take the initiative in subjects Reserved. The fact that I did so under the orders of the Governor was nothing. The circumstance that the Director of Industries who was directly working under me had long been looking after matters connected with mines and assisting the Board of Revenue, was a matter of no consequence. My note had to be dropped like a hot potato, the Governor who ordered me to prepare the note having surrendered to the objection.

(3) *Memorandum by Mr C. Y. Chintamani to the Reforms Enquiry Committee, 10 August 1924*[1]

65. *Education.* This is a much divided subject. It is partly Central and partly Provincial; partly Reserved and partly Transferred. It is under an hon. member of the Governor-General's Executive Council; it is under all the Members of the Provincial Government. The Education

[1] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, pp. 302-9.

Member of the Government of India had (I do not know if he has it still) the Central Advisory Board and has his Educational Commissioner and the Universities Conference. Our Director of Public Instruction used to be addressed direct and we had to stop the practice except where only statistical and other information was wanted. Benares and Aligarh Universities as a Central and hence an Agency subject and European and Anglo-Indian education because probably an Indian Minister cannot be trusted, are under the Finance Member. A primary school attached to the Government Press is under the Home Member because the Government Press being ' Reserved ' and under him its primary school had also to be under the same control. Primary and all vernacular education was under the Minister of Local Self-Government while I was responsible for English secondary and collegiate education. I was also responsible to the Council for the Universities of Allahabad and Lucknow. It was decided by Sir Harcourt Butler in 1921 that as he was Chancellor *ex officio* in his capacity of Governor, as both universities were almost entirely dependent for their existence upon financial aid from the Government which had to be voted by the Legislative Council on my motion, as my failure to get the demand voted might have to be followed by resignation; in short, as I was the man responsible to the Council, all communications from the university including those intended for him as Chancellor should be addressed to the Education Secretary to the Government and submitted to him after I noted thereon. This, however, he reversed in 1922 and directed that the latter class of letters should be addressed to his Private Secretary. His Excellency would send them direct to the Education Secretary (though neither was the Chancellor's secretary) and if ordinarily the latter sent the papers to me before submitting them to the Chancellor (or the Governor, I could not be sure which), this was not done invariably. My representation in favour of a return to the first year's practice was not successful.

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67. *Agriculture.* The fragmentation and minute sub-division of holdings has long been recognized as an economic evil that effectually retarded agricultural progress and increased the difficulties in the way of the introduction of improved methods. In the Department of Agriculture an inquiry was instituted in 1921 with the approval of H.E. the Governor. When, however, the officer who had conducted the inquiry submitted his report in 1922 and a certain amount of noting had been done by the officiating Secretary for Agriculture, it began to be doubted whether after all the question should not have been dealt with in the Revenue Department—a Reserved subject in charge of the Finance Member. H.E. the Governor decided that the case should be transferred to him. I raised no objection. It was only the other day—two years later—that the Governor in Council issued his resolution on the report of 1922. And his decision is that some work should be done in the Co-operative Department—a Transferred Department, again ! This case may be cited as one of many illustrations of the impracticability of making or maintaining a clear-cut division of subjects into ' Reserved ' and ' Transferred '.

* * *

73. *Industries.* Industries like education is a much divided subject. Heads 17 to 20 of the schedule of Central subjects, and heads 14, 24, 26, 27, 31 and 43 of the schedule of Provincial subjects[1] reveal the extent to which matters pertaining to Industries are excluded from the purview of the Ministers in charge of 'development of industries'. It may possibly be held that not all the excluded heads have a necessary connexion with 'development of industries' but I think my contention will generally be admitted with regard to the majority of them. And the non-provincialization or the non-transfer of some of them have the effect of hampering the work of Ministers of Industries. The provincial Directors of Industries have to be under two or, it may be, three Members of the Government. Factories established by the United Provinces Government in the Forest Department were disposed of last year without any reference to the Minister of Industries. A carpentry school established at Bareilly in the Industries Department had been transferred to the Forest Department before the new system of Government came into being and rechristened Woodworking Institute and was retransferred to Industries only last year after nearly two years of effort. The latter was immediately able to make a substantial reduction of expenditure. The Minister of Industries can afford no relief to owners and managers of factories (boiler and factory inspectors are 'Reserved') or to the labouring population. He does not know and cannot touch applications for prospecting licences or mining leases. He can do very little if anything to facilitate the development and utilization of water power.

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74. . . . Early in the life of the Government a question had to be answered that related to mineral springs. It was remitted by the Industries Department to the Revenue (or some other) Department under the Home Member on the ground that 'mineral springs' had nothing to do with 'development of industries' and 'development of mineral resources' was a Reserved subject under that hon. member. The latter refused to deal with it on the ground that 'mineral springs' were not 'mineral resources'. The Governor was appealed to and His Excellency decided that it was Medical. 'Burma dry meat trade' was another matter that was kicked like a football from one department to another. It was first said that it came under 'development of industries'. When I firmly pleaded 'not guilty' it was presented to the Home Member as being a trade matter. He declined the present and it was eventually forced upon the Minister of Local Self-Government on the plea that slaughter-houses were a municipal concern.

75. As the Government of Bombay observed in their dispatch to the Government of India of 11 November 1918,

> 'A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any one of the departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another department of Government. The primary duty of the Government as a whole

[1] See pp. 154 and 158-60, below. [Ed.]

is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer . . . will involve a reference to the authorities in charge of the Reserved Departments. . . There are few, if any, subjects on which they (the functions of the two portions of the Government) do not overlap. Consequently the theory that, in the case of a Transferred subject in charge of a Minister, it will be possible to dispense with references to departments of Government concerned with the control of Reserved subjects is largely without foundation.'

The extent to which this prediction has been realized in actual administration is remarkable. In the light of my experience I must endorse every word of the above passage. The observations of the Government of Bombay on the question of financial control leading up to the conclusion that Ministers alone cannot be responsible to the Legislature because of the very real control that the Finance Department must exercise over ' all expenditure up to the time when it is made ', have been demonstrated to be not a whit less true.

(4) *Report of the Reforms Enquiry Committee, 3 December 1924*[1]

26. The division of subjects into Reserved and Transferred subjects is of the very essence of Dyarchy, and Dyarchy must be held responsible for any failure in the working of the Constitution which can be directly attributed to the administration of a Transferred subject impinging upon the administration of a Reserved subject or vice versa. The Governments of the United Provinces and of the Punjab have both referred to this point which is also dealt with by Sir K. V. Reddi and Mr Chintamani, while several of the grievances indicated in Mr Kelkar's evidence are also directly due to this reaction of one department of Government upon another. It is indeed a difficulty which must arise when any attempt is made to divide the functions of government, and none of us would seek to minimize its importance. It is in fact a difficulty which is experienced to a greater or less extent in the division of sovereignty between the Federal and Local Governments which is a feature of all federations. Some authority must decide on which side of the dividing line the decision of a particular case must be reached. In the Provincial Governments in India this power has been placed with the Governor, and it was therefore in the exercise of his proper functions that the Governor was called upon to decide which department should deal with the particular cases which, according to one witness, were kicked like a football from one department to another. We fully agree that before any question is decided in a dyarchic Constitution which impinges upon the two sides of the administration it is necessary that both sides should see the case and be given an opportunity of expressing their individual views. In some such cases decisions were apparently reached without one side of the administration having had an opportunity of being heard, but this is contrary to the scheme of administration contemplated by the existing Constitution.

[1] *Report of the Reforms Enquiry Committee* (1924), pp. 26-7.

It is true, however, that there should be no doubt upon which side of the administration responsibility for the actual decision taken should be placed. The other side must be free from responsibility for such decisions, and it can then have no real grievance if the decision taken is contrary to any advice which it may have given. Sir K. V. Reddi suggests that such success as Madras is believed to have achieved in working the Constitution was rendered possible by the attempt to ignore the dyarchic system, and Mr Chintamani also suggests that the dyarchic system worked well in the United Provinces for some time after its inception just in the measure in which it was departed from. The evidence of these witnesses, however, appears to indicate—we hope we are not misrepresenting them—that they were disappointed in not being able to control the decisions on the Reserved side of the administration, and in Mr Chintamani's case the disappointment was doubtless increased because of the change of system to which he refers. Sir K. V. Reddi, for example, states that the Ministers were only three and the Executive Councillors were four, and the former were often obliged to yield to the latter. Mr Chintamani also says that he asked the Governor to abandon the meetings which he was holding with his Councillors or else to meet his two Ministers together, but he was informed that the Governor had no option but to hold meetings of the Executive Council, but he saw no necessity for weekly meetings of the Governor and the two Ministers, and he would call the Ministers together whenever the need was apparent. Mr Chintamani also says that the Ministers found that contrary to expectation they were *not* being taken into confidence on *all* subjects (the italics are Mr Chintamani's). From Mr Kelkar's evidence it would appear, also, that he felt himself aggrieved on account of some decisions which clearly concerned the other side of the Government. He further stated in his written evidence that there is nothing in the Act or in the rules or executive instructions that gives the Ministers a right to force their advice or views on the other half of Government. We must conclude the examination of this question by admitting, as we have already done, that the inevitable result of a division of subjects is that one side of the administration must react upon and consequently restrict the operation of the other.

VII. The Government of India on the Role of the Finance Department under the Reforms[1]

There is one portion of the Provincial Executive to which the Constitution assigns a distinct position and clearly defined functions.[2] That is the Finance Department. Its peculiar position is a direct result of the introduction of the dyarchical system in the Provinces. It continues to be a unified department and administered by a Member of the Executive Council, but deals with two final authorities for the preparation of schemes and for the sanction of expenditure, only one of which is directly subject to the financial control of the Legislature. Unlike those of the British Treasury, its functions are therefore largely advisory and

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 14-15.

[2] Rules 37-45 of the Devolution Rules.

statistical. It has indeed its appropriate duty of ensuring that proper financial rules are framed for the guidance of administrative departments. It is also responsible for the safety and proper employment of the Famine Insurance Fund and for the raising and the future service of loans. During the course of the year, it advises administrative departments on all schemes of new expenditure for which it is proposed to make provision in the Estimates, on various matters connected with the establishments and the assigning of revenue, on taxation and on loans. It is the guardian of financial regularity but in general, in theory at any rate, its function is to watch and advise on financial provisions that are necessary to give effect to policies rather than to control the administration. If the advice given is not acceptable to the department concerned, the Finance Department may require its report to be submitted by that department to the Governor for the orders of the Local Government, i.e. the Governor in Council in the case of a Reserved subject and the Governor acting with his Ministers in the case of a Transferred subject.

In connexion with the annual Budget, it is the function of the Finance Department to estimate the revenue which will accrue and the expenditure which will come in course of payment. But in the apportionment of the free balance among the Transferred and Reserved subjects, it plays no part under the Constitution. The allocation is regulated by Statutory Rules and it has been set down for agreement between the Transferred and Reserved halves of the Government. If they cannot themselves reach a decision, the Governor is empowered to make, not an allotment by selection of schemes for expenditure, but by a distribution in fractional proportions of the revenue and balances for the duration of the then existing Legislative Council. The decision to impose fresh taxes or to raise loans is also taken by the Governor in Council or by the Minister or Ministers according as the proposal originates with the Governor in Council or with the Governor and Ministers. If an order of allocation is made, any increase of revenue accruing during the period of the order on account of the imposition of fresh taxation is allocated only to that part of the Government by which the taxation is initiated, unless the Legislature otherwise directs. The Finance Department merely examines and reports on all proposals for the increase or reduction of taxation and for borrowing by the Local Government.

When the annual appropriation has been settled and has received, where necessary, the approval of the Legislature, the powers of the Finance Department expand. It is the chief authority for sanctioning re-appropriations within grants made by the Legislature. It lays the Audit and Appropriation Accounts before the Committee on Public Accounts and brings to the notice of the Committee all expenditure which has not been duly authorized and any financial irregularities.

VIII. Grant of enhanced Powers of Appropriation to Ministers and Members: Proposals by the Reforms Enquiry Committee, 1924, and the Action taken thereon[1]

The Reforms Enquiry Committee, 1924, made the following recom-

[1] Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. iv, p. 283.

mendation : The powers of a Member or a Minister to *sanction re-appropriations* which now only extend to re-appropriations within a grant between heads subordinate to a minor head should be extended, subject to the existing limitations in regard to expenditure which involves a recurring liability and in regard to the communication to the Finance Department of a copy of any order, to any re-appropriation within a grant from one major, minor or subordinate head to another.'[1]

The Government of India gave the following reasons for not accepting the recommendation : ' It is possible that in making this recommendation in wide terms the Committee did not realize the varying practice in regard to the voting of grants in different Provinces. For example, Burma has only four grants, one for each member of the Government, and the power of the Legislature in regard to appropriation of supply is taken away by re-appropriation within these large grants. Some further definition of the proposed powers of Ministers to re-appropriate without the sanction of the Finance Department would certainly be required.

The Government of India were, however, opposed to this recommendation on more general grounds. In the United Kingdom, Treasury sanction is required to every re-appropriation from one sub-head to another within a grant, and every such re-appropriation has to be defended before the Public Accounts Committee. In India the Public Accounts Committees are similarly required to scrutinize every re-appropriation within a grant, and for that reason it is desirable to retain in the hands of the Finance Department the power of sanctioning such re-appropriations. The Public Accounts Committees, both of the Assembly and of the Provincial Councils, may be expected, as time goes on, to assert more and more strongly the necessity from their standpoint of restricting powers of re-appropriation ; the Government of India were therefore unable to agree to any widening of the existing rules by reducing the powers of the Finance Department. The Government of India have no doubt that, as experience grows, Provincial Governments will be able to improve their form of estimate and appropriation accounts, following on improvements contemplated in the Central Government's forms, so as to give the required elasticity by widening the scope of sub-heads and replacing minor and major heads of account by sub-heads. The Government of India recognize that the present dyarchical division between the Finance Member and the Ministers makes the existing restrictions rather more irksome, but the main objection taken to them is exactly the objection taken everywhere to Finance Department control, which is of course essential.

IX. Working of the Joint Purse System

(1) *Devolution Rules*

(Rules under section 45A of the Government of India Act, 1919)

30. All proposals for raising taxation or for the borrowing of money on the revenues of a Province shall, in the case of a Governor's Province, be considered by the Governor with his Executive Council and Ministers

[1] *Report of the Reforms Enquiry Committee* (1924), par. 113.

sitting together, but the decision shall thereafter be arrived at by the Governor in Council, or by the Governor and Minister or Ministers, according as the proposal originates with the Governor in Council or the Governor and Ministers.

31. Expenditure for the purpose of the administration of both Reserved and Transferred subjects shall, in the first instance, be a charge on the general revenues and balances of each Province, and [the framing of proposals for expenditure in regard to Transferred and Reserved subjects][1(a)] will be a matter for agreement between that part of the Government which is responsible for the administration of Transferred subjects and that part of the Government which is responsible for the administration of Reserved subjects.

32. (1) If [at the time of the preparation of the Budget][1(b)] the Governor is satisfied that there is no hope of agreement within a reasonable time between the Members of his Executive Council on the one hand and Ministers on the other as to [the apportionment of funds between Reserved and Transferred Departments respectively,][1(c)] he may, by order in writing, allocate the revenues and balances of the Province between Reserved and Transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subject.

(2) An order of allocation under this rule may be made by the Governor either in accordance with his own discretion, or in accordance with the report of an authority to be appointed by the Governor-General in this behalf on the application of the Governor.

33. Every such order shall (unless it is sooner revoked) remain in force for a period to be specified in the order, which shall be not less than the duration of the then existing Legislative Council, and shall not exceed by more than one year the duration thereof :

Provided that the Governor may at any time, if his Executive Council and Ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them :

Provided further, that if the order which it is proposed to revoke was passed in accordance with the report of an authority appointed by the Governor-General, the Governor shall obtain the consent of the Governor-General before revoking the same.

34. Every order of allocation made under these rules shall provide that, if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase, unless the Legislature otherwise directs, shall be allocated in aid of that part of the Government by which the taxation is initiated.

[1] (*a*) The following was substituted for these words under Notification No. F. 290/29/25, dated 15 July 1926, *Gazette of India* (1926), pt i, p. 806 : ' the framing of proposals for the apportionment of funds between Reserved and Transferred Departments respectively, whether at the time of the preparation of the Budget or otherwise '.

(*b*) The following was substituted for these words under the above Notification : ' at any time when proposals are to be framed for the apportionment of funds between Reserved and Transferred Departments respectively '.

(*c*) The following was substituted for these words under the above Notification : ' such apportionment '. [Ed.]

35. If at the time of the preparation of any Budget no agreement or allocation such as is contemplated by these rules, has been arrived at, the Budget shall be prepared on the basis of the aggregate grants respectively provided for the Reserved and Transferred subjects in the Budget of the year about to expire.

(2) *Memorandum by Mr C. Y. Chintamani to the Reforms Enquiry Committee, 10 August 1924*[1]

11. The Joint Select Committee did not accept the Government of India's proposal in behalf [of] ' a divided purse ' in the Provinces. This means that Finance was to be treated as a subject common to both sides of the Government. But the Rules made under the Act have converted it into a Reserved Department, in fact though it may or may not be in name. Rule 36 (1) of the Devolution Rules lays down that the Finance Department ' shall be controlled by a member of the Executive Council '. I have throughout contended that as the department is common to the whole Government it should have been left to the discretion of the Governor which of his colleagues he would place in charge of the department. I have never been able to convince myself of the justification of Rule 36 (1) as it stands. It is a reflection on Ministers and it gives an unfair initial advantage to the Governor in Council and Reserved subjects over the Ministers and Transferred subjects. Nor is the objection only theoretical and sentimental. Experience inside the Government on the Transferred side satisfied me that the rule operated to the disadvantage of Ministers.

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16. Not a pie of new expenditure can be incurred by the Ministers without the approval of the Finance Member. Have they been afforded adequate opportunities of satisfying themselves that no avoidable new expenditure has been sanctioned in the Reserved half of the Government ? The answer is in the negative. I ventured to suggest to Sir Harcourt Butler in 1922 that every proposal of new expenditure in any department exceeding amounts that his Excellency might fix for recurring and non-recurring expenditure might be circulated to all the four members of the Government and where there was disagreement of opinion, might be considered at a meeting of the whole Government. He did not agree even to the supply of information to the Ministers ! And oftener than not, the first time we knew of the new financial proposals and decisions of the Governor in Council during the financial year was when supplementary estimates were actually presented to the Legislative Council. Even in a department for which I was responsible to that body it happened once that the Secretary of State made a payment to a retired officer without any reference to the Local Government and asked the latter to make good the amount to him. It happened to be a case in which the self-same claim submitted by that officer before leaving India had been disallowed by the Local Government, the Minister, the Finance Member and the Governor concurring in the decision. The Secretary of State's

[1] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, pp. 279-83.

communication was received by the Finance Department and the first time I as the Minister concerned got to know anything of it was when I saw a supplementary estimate placed before the Council and then made inquiry of that department.

* * *

Another incongruity—amounting in my opinion to an absurdity and an insult to the Ministers. A few days before my resignation I received ' for information ' a printed copy of a circular letter already issued to *all* heads of departments—i.e. including those relating to the Transferred subjects—of the ' Governor in Council ' directing them not to send up proposals of new expenditure in view of the financial position of the Government. In the Transferred Departments such proposals would be addressed to the Ministers for administrative sanction and if the latter accorded it they would then ask the Secretary seized of the subject to submit the case to the Finance Department. Therefore, the order of the Governor in Council amounted to this, that the Reserved side of the Government forbade the officers serving in the Transferred Departments to submit proposals to their chiefs the Ministers. And the Governor in Council issued that order without a word of consultation with the Ministers and without so much as the courtesy of informing them of his intention to do so. We were only favoured with *post facto* information just in the nature of a press communique that an editor is used to. As our resignations had already been accepted on another matter which itself illustrated the position of Ministers under the present dispensation, all that had to be and was done was to protest against the unwarranted action of the Governor in Council.

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18. Many proposals of Ministers necessarily go before the Finance Committee. But neither of them was nominated a member of the Committee in 1921. Nor were they consulted about the nominations. A complaint having been made, the Finance Member undertook that one of them should be nominated in the following year, and that both of them should be consulted about the other nomination. Neither of these things was, however, done in 1922. And the Ministers were equally ignored in 1923 by the new Governor and the new Finance Member. But Finance is a department common to the whole Government. Worse still. No officer serving in the Transferred Departments was in the beginning informed of meetings of the Committee before which proposals relating to them were to be placed for consideration, and the Finance Member or the Finance Secretary or both actually joined non-official critics in the Committee (after they had previously approved of the proposals) which was an antecedent condition of their inclusion in the agenda, in turning them down. This was only known to the Ministers subsequently when the Finance Department informed them of the fate of some of those proposals. It was thereafter, and in compliance with request, that the printed minutes of the proceedings were made available

and from them that the attitude adopted by the Finance Member and the Finance Secretary could be gathered. A protest had to be made and it was considered at a meeting of the Government and there followed the concession that Secretaries and heads of departments would be informed and allowed to attend meetings and plead for their proposals.

(3) *Memorandum submitted by the Government of Bombay to the Indian Statutory Commission, 1930*[1]

So far as this presidency is concerned the apportionment of funds between the departments dealing respectively with the Reserved and Transferred subjects has been arrived at by amicable agreement between the Members of the Executive Council and Ministers who have based the division upon the previous actual expenditure in these departments. The division has been arrived at after a good deal of give and take by the Honourable Members and Ministers at a series of joint meetings. Both halves of Government fully realized the necessity for economy and looked at the problem of balancing the budget from the standpoint of Government as a whole and not from that of narrow departmentalism. The special power of the Governor under Devolution Rule 32 has never been exercised under the circumstances. The deadlock contemplated by the Devolution Rule has never occurred nor has there been any serious disagreement. To quote an example, in 1922-3 a reserve of 20 lakhs was allocated by common agreement in the proportion of 12 lakhs to Reserved and 8 to Transferred subjects. The actual expenditure from the 20 lakhs, however, was $8\frac{1}{2}$ lakhs for the Reserved and 10 lakhs for the Transferred. It may legitimately be concluded from this that the Members and Ministers trust the Finance Department to hold the scales even between the departments in permitting application to the Legislative Council for grants from the Reserve. A cut of 60 lakhs made by the Legislative Council in 1922-3 was also spread proportionately over both Reserved and Transferred subjects because of such harmonious relations between the Honourable Members and Ministers. The experience in Bombay, therefore, has been one of ' harmonious relations ' and no difficulty has been experienced in this matter.

(4) *Report of the Indian Statutory Commission, 12 May 1930*[2]

397. There had been much discussion during the gestation of the Reforms as to whether the revenue which a Province was to spend should form a single fund out of which authorized outlay should be drawn or whether, in view of the introduction of dyarchy, the Transferred Departments should have resources of their own, distinct from the resources available to the Reserved Departments. The alternative was described as a choice between the method of a ' joint purse ' and that of a ' separate purse '. According to the plan favoured in the Joint Report, the

[1] Memorandum submitted by the Government of Bombay to the Indian Statutory Commission.—*Indian Statutory Commission Report*, vol. VII, pp. 270-1.

[2] Vol. I, pars 397-8.

provincial Budget was to be framed by the Executive Government as a whole.[1] The first charge on provincial revenues was to be the contribution to the Government of India; after that the supply for the Reserved subjects was to have priority. The allocation of supply for the Transferred services was to be made by the Ministers, who would, with the Governor, also decide whether additional taxation was to be imposed. These proposals were criticized by the Government of India on the ground, among others, that annual allocation of funds would generate serious friction between the two halves of the Government. It expressed its preference for a division of provincial resources so that the method of 'separate purses' might be followed, and this was the form adopted in the Government of India Bill as it was introduced into Parliament. The Joint Select Committee, however, did not endorse this suggestion, but recommended that the Governor should allocate a definite proportion of the revenue to the two sides, unless agreement could be reached between them without his exercising this power. This was the scheme ultimately embodied in the Act. Consequently, in each Governor's Province, the two sides of Government confer on this matter and endeavour to reach an agreement as to the amounts of the estimates to be put forward by the different departments which they represent. The department of the Finance Member collates the various suggestions and demands, and the Governor is available to assist in removing obstacles and in promoting the spirit of adjustment. It is a very gratifying circumstance that, in spite of the financial stringency through which the Provinces have passed and the natural anxiety of Ministers to secure the largest possible grants for 'nation-building' services, there has been no occasion in any Province when the Governor has had to resort to the power, which he has in reserve, of ordering the allocation of available funds in such a way as seems most proper, and that without exception the two sides of Government have reached an agreement as to what was best to be done in the difficult circumstances.

398. It was inevitable that, under the dyarchical Constitution, the provincial Finance Department should occupy a peculiar and distinctive position in the administrative system, for its functions, which include control of expenditure, bring it into intimate contact with all other departments. A section of the Devolution Rules is devoted to a definition of its functions and its relations with the Transferred and Reserved halves of the Government. Its duties are largely advisory. It examines and reports on all schemes of new expenditure, on questions relating to establishments, on taxation and on loans. Its advice may not be rejected by a Reserved Department without reference to the Executive Council, but a Minister may disregard it on his own responsibility. If he does so, the Finance Department may demand a reference to the Governor, but the latter may not disregard the advice of Ministers save for special reasons. In theory, the Finance Department does not initiate taxation, but only reports on proposals for fresh taxation emanating from the Reserved or Transferred half of the Executive. The Devolution Rules do not provide that it should take part in the allocation of revenues, which, as we have explained, is a matter for agreement between the two halves of the Government.

[1] *Montagu-Chelmsford Report*, par. 256.

X. Financial Stringency and its Political Consequences

(1) *Memorandum by Sir Surendranath Banerjee, Minister, Bengal, to the Reforms Enquiry Committee, 8 October 1924*[1]

In the Central Provinces, in the Punjab and in the United Provinces ex-Ministers have given evidence to the effect that Dyarchy has failed. Their testimony is entitled to the highest weight, for they speak with first-hand knowledge. I cannot, however, say with due regard to facts, that in Bengal Dyarchy has failed so far as it was under my control (viz. Local Self-Government, Public Health and Medical Departments). We were crippled through want of funds. It is the Meston Award and the Finance Department that checked our activities. The Meston Award[2] perpetrated a grave injustice by depriving Bengal of one-half of the proceeds of the income-tax which we formerly had and by diverting to the coffers of the Central Government the whole of the proceeds of the jute tax which is peculiar to Bengal. We cried ourselves hoarse over this matter. We protested in the Legislative Council. We waited in deputation, and the only relief we obtained was the remission of the yearly tribute of 63 lakhs of rupees payable to the Central Government. In Bengal, it would have been difficult to raise the cry that Dyarchy had failed if we had more money and could liberally distribute it among the nation-building departments, such as Sanitation, Education and the Industries. I know as a matter of fact that some schemes of water-supply for the riparian municipalities were ready but could not be started, because there was no money. Owing to the same cause, schemes for rural water-supply and rural dispensaries were mutilated or abandoned. Could we even partially give effect to them, the Reforms would have been blessed. If we could not, was it the fault of the Dyarchy or due to the impecuniousness of the Government ? The responsibility of the failure must be shouldered by the Meston Committee and the Finance Department. The nation-building departments never got more than 35 per cent out of the total revenues of the Province, the balance going to the Reserved side. The departments that needed the utmost financial help were the departments that were most starved. I recognize the difficulties of the situation. Under a purely bureaucratic form of Government, the departments dealing with Law and Order received the largest measure of attention ; for the maintenance of the public tranquillity must constitute the basic foundation of all stable progress. But to sacrifice the superstructure, or to make it inadequate for its purposes, for the sake of an unnecessarily costly foundation, must be regarded as a serious administrative blunder and perversion of the true administrative perspective. The average man dealing with his own affairs would not be guilty of such a mistake. Far less is the justification for a Government administering the affairs of a great community. Possibly there were heavy committals on the Reserved side, which had to be made good. But the fact remains that the Transferred Departments were started with inadequate financial provision, and it is this fact, coupled with the intervention of the Finance Department, that really crippled the work of our departments.

[1] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, pp. 193-4. Sir Surendranath Banerjee was a Minister in the Government of Bengal.

[2] See Section E, chs. II and VII, below. [Ed.]

(2) *Report of the Indian Statutory Commission, 12 May 1930*[1]
Financial Stringency in the Provinces

399. Along with the grant of financial autonomy and the assignment of independent sources of revenue to the Provinces, responsibility for the administration of all Provincial Services passed to the Provincial Governments. It had been hoped that the substantial initial surpluses which the Provinces were expected to get (according to the calculations on which the Meston scheme was based), would enable Ministers, when they took charge of Transferred Departments in 1920, to develop the 'nation-building' services entrusted to them without the imposition of additional taxation, at any rate in the earlier years. Indeed, so great was the political importance attached to the obligation to leave each Province with a reasonable margin for such development that the Meston Committee actually regarded it as a limiting consideration by which it was bound, and one of the grounds put forward in the Meston Report to justify its scheme of contributions was that it was thus possible 'to comply with the requirements of leaving each Province with a surplus, and of inaugurating the new Councils without the necessity of resort to fresh taxation'.[2] Circumstances over which neither the Government of India nor the Provincial Governments had any control rendered the realization of these hopes impossible. India, like every other country that had taken part in the War, was at the time of the introduction of the Reforms passing through an acute financial crisis. It had for several years concentrated its energies on the prosecution of the War, and developments in all civil departments had been suspended or curtailed. There was, consequently, during the first few years after the termination of the War, much reconstruction work to be done. Salaries had also to be increased to meet the increased cost of living, while the instability of the currency and the fluctuations of prices were factors which impeded industrial and commercial development and seriously disturbed the financial situation. The consequences of this combination of adverse circumstances will be evident from the following table, in which the estimates made by the Meston Committee in 1920 of the surpluses which would be left to the Provinces under its scheme are contrasted with the actual provincial surpluses or deficits in the first complete year under the Reforms, 1921-2.

(In Lakhs of Rupees)

	Estimates by Meston Committee of increased spending power gained by the Provinces under its scheme	Actual surplus (+) or deficits (−) in 1921-2
Madras	+228	− 99
Bombay	+ 37	−191
Bengal	+ 41	−215
United Provinces ..	+157	−148
Punjab	+114	−171
Burma	+182	+ 14
Bihar and Orissa ..	+ 51	− 15
Central Provinces ..	+ 30	− 24
Assam	+ 27	− 24

[1] Vol. I, pars 399-400.
[2] *Meston Report*, par. 14.

Political Consequences of Financial Stringency

400. The history of financial administration during the first three years after the introduction of the Reforms is, therefore, largely that of the struggles of the Central and Provincial Governments to establish financial equilibrium by drastic economy and recourse to additional taxation. Court fees, stamp duties, registration fees and the excise duties on liquors were increased in almost all the Provinces, while at least three Provinces seriously contemplated the levy of succession duties. Special committees and officers in all the Provinces made detailed inquiries into the expenditure of all departments. Consequently, so far from there being any marked development of the 'nation-building' services entrusted to Ministers, expenditure on the Transferred Departments at the end of 1923-4 was actually less than in the year 1921-2. The following figures show the reduction in the larger provinces:

EXPENDITURE ON TRANSFERRED DEPARTMENTS
(IN LAKHS OF RUPEES)

	1921-2	1923-4
Madras	428	418
Bombay	561	478
Bengal	352	321
United Provinces ..	352	314
Punjab	307	282

It is not, therefore, surprising that in these years the financial arrangements, commonly, though not quite accurately, known as the Meston Settlement—and in particular the contributions to the Central Government—became the subject of bitter criticism by all the Provinces. It is also easy to see how this acute financial stringency had its reactions upon the political situation. The majority Report of the Muddiman Committee declared that 'the difficulty arising from finance has formed one of the main obstacles to the success of the Reforms'.[1] The following passage in paragraph 53 of that Report indicates the views of some of the Provincial Governments:

> The Madras Government refer to the deep sense of injustice felt with this Settlement as contributing to the dissatisfaction felt at the working of the reforms scheme; and they say that unless the financial embarrassments consequent thereon can be mitigated or removed, no changes whether in the direction of extending the sphere of ministerial control or otherwise will result in material improvement. The Bombay Government say that they have never ceased to protest against this Settlement; complaints are being perpetually made that the departments controlled by Ministers are being starved; and until the financial arrangements existing between the Governments of India and of Bombay are readjusted, no hopes can be held out of the satisfactory working of the Act of 1919. The Bengal Government say that in Bengal the Meston Settlement is one of the main defects in the constitution; it stood condemned from the outset, and to this more than to any other cause, perhaps, may be attributed much of the discontent against

[1] *Report of the Reforms Enquiry Committee* (1924), par. 56.

the Reforms, which prevails even among the more moderate element. Finally, the Assam Government say that of all the remediable defects which have hampered the working of reforms, finance is the most important ; if even at this stage the Ministers could be given a surplus, however modest, an enormous improvement in the situation would result.

The Muddiman Committee further observed as follows :

It is due to it (i.e. the Meston Settlement) that Ministers have been unable to enter upon a policy of progressive development in the spheres of administration committed to their care. If they had been able to do so, they would have been able to provide an answer to those critics who have reiterated the allegation that the reforms were a sham, and they would also have been able to consolidate their position or else have been required to make way for other Ministers who could have enunciated a policy more acceptable to the councils which would incidentally have assisted in the establishment of the responsibility of the Ministers to the councils.[1]

XI. Constitutional Provisions regarding the Public Services

(1) *The Civil Services in India*
Section 96B of the Government of India Act, 1919

[2][96B. (1) Subject to the provisions of this Act and of rules made thereunder, every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that Service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that Service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's Province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the Province in order to obtain justice, and the Governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the Civil Services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to Local Governments, or authorize the Indian Legislature or local Legislatures to make laws regulating the Public Services :

[1] *Report of the Reforms Enquiry Committee* (1924), p. 48.

[2] Section 96B was inserted by Part I of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the Civil Service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the Civil Service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the Civil Service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.][1]

(2) *Offices reserved to the Indian Civil Service : Section 98 and Schedule III of the Government of India Act, 1919*

98. Subject to the provisions of this Act all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

* * *

THIRD SCHEDULE

Offices reserved to the Indian Civil Service

A. Offices under the Governor-General in Council

1. The offices of Secretary, Joint Secretary, and Deputy Secretary in every department except the Army, Marine, Education, Foreign, Political, and Public Works Departments : Provided that if the office of

[1] The following sub-section was added as sub-section (5) of Section 96B by Section 2 of 15 & 16 Geo. V, c. 83 :

(5) No rules or other provisions made or confirmed under this section shall be construed to limit or abridge the power of the Secretary of State in Council to deal with the case of any person in the Civil Service of the Crown in India in such manner as may appear to him to be just and equitable and any rules made by the Secretary of State in Council under sub-section (2) of this section delegating the power of making rules may provide for dispensing with or relaxing the requirements of such rules to such extent and in such manner as may be prescribed.

Provided that where any such rule or provision is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule or provision. [Ed.]

Secretary or Deputy Secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of Deputy Secretary or Secretary in that department, as the case may be, need not be so filled.

2. Three offices of Accountants General.

B. Offices in the Provinces which were known in the year 1861 as 'Regulation Provinces'

The following offices, namely :

1. Member of the Board of Revenue.
2. Financial Commissioner.
3. Commissioner of Revenue.
4. Commissioner of Customs.
5. Opium Agent.
6. Secretary in every Department except the Public Works or Marine Departments.
7. Secretary to the Board of Revenue.
8. District or Sessions Judge.
9. Additional District or Sessions Judge.
10. District Magistrate.
11. Collector of Revenue or Chief Revenue Officer of a District.

(3) *Devolution Rules*

(*Rules under Section 45A of the Government of India Act, 1919*)

10. The authority vested in the Local Government over officers of the Public Services employed in a Governor's Province, shall be exercised in the case of officers serving in a department dealing with Reserved subjects by the Governor in Council, and in the case of officers serving in a department dealing with Transferred subjects by the Governor acting with the Minister in charge of the department : provided that—

(*a*) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an all-India or provincial Service without the personal concurrence of the Governor ; and

(*b*) no order for the posting of an officer of an all-India Service shall be made without the personal concurrence of the Governor.[1]

11. If an officer performs duties both in a department dealing with Reserved subjects and in a department dealing with Transferred subjects, the Governor shall decide in which department he shall be deemed to be serving.

12. A Local Government shall employ such number of Indian Medical Service officers in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council.

[1] Under Notification No. F. 46/2/30, dated 28 August 1930, *Gazette of India*, pt i, p. 968, the following item was added to the list of Transferred subjects under Schedule II of the Devolution Rules :

'23A. Control, as defined by rule 10, of such members of all-India and provincial Services serving within the Provinces as are employed in departments dealing with Transferred subjects ; and control, subject to legislation by the Indian Legislature, of such Public Services within the Province other than all-India Services as function in departments dealing with Transferred subjects.'—'All Governors' Provinces'. [Ed.]

(4) *Authority of the Local Governments over Officers of the all-India Services and the Officers appointed by the Secretary of State*
Rules regarding the Civil Services in India made by the Secretary of State in Council under Section 96B(2) of the Government of India Act[1]

X. A Local Government may for good and sufficient reasons
(1) censure,
(2) reduce to a lower post,
(3) withhold promotion from, or
(4) suspend from his office
any officer of an all-India Service :

Provided that no head of a department appointed with the approval of the Governor-General in Council shall be reduced to any lower post without the sanction of the Governor-General in Council.

Military Officers in Civil Employ

XI. A military officer may not be reverted from his civil employment except under the orders of the Governor-General in Council.

* * *

XVII. Every officer being a member of an all-India Service against whom an order may be passed under Rule X and who thinks himself wronged thereby may appeal to the Governor-General in Council against such order, and if his appeal relates to an order such as is referred to in sub-heads (2), (3) and (4) of that rule and is rejected by the Governor-General in Council, may appeal to the Secretary of State in Council.

XVIII. Every officer being a member of a provincial Service, or holding a special post as defined in Rule V, against whom an order may be passed under Rule XIII and who thinks himself wronged thereby may appeal to the Governor :

Provided that any officer to whom this rule applies, and who was appointed by the Secretary of State in Council before the commencement of the Government of India Act, 1919, may appeal against any order passed on appeal by the Governor under this rule to the Governor-General in Council, and thereafter to the Secretary of State in Council, if his salary is not less than Rs 500 a month :

Provided further that a further appeal under this rule shall lie to the Governor-General from any Deputy Collector to whom, in virtue of section 4 of the Repealing and Amending Act, 1914, the provisions of section 25 of Bengal Regulation IX of 1833 apply.

XII. Reforms and the Public Services

(1) *Memorandum by Mr C. Y. Chintamani, Ex-Minister, United Provinces, to the Reforms Enquiry Committee, 10 August 1924*[2]

32. The two provisos to Rule 10 of the Devolution Rules place the responsible Ministers on the same footing as the non-responsible Members

[1] These rules were cancelled by Notification No. F. 9/3/30, dated 19 June 1930 [the Civil Services (Classification and Appeal) Rules]. See *Supplement to the General Statutory Rules and Orders.* (Ed.)
[2] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, pp. 289-94.

of the Executive Council. . . The first proviso extends to officers of both the all-India and provincial Services; the second is limited to the former. The provisos may work without producing friction; but they may not. It depends. We have had both experiences in the United Provinces, particularly in respect of proviso (*a*). I can conceive of no justification for proviso (*b*). The Functions Committee in paragraph 70 of their report urge such restriction of the powers of a Minister only in the case of officers of the I.M.S. [Indian Medical Service], 'because, owing to variations in the value of private practice in different appointments an order of transfer may seriously affect emoluments'. I do not approve of this. It is the Civil Assistant Surgeons promoted to the position of Civil Surgeons who have most to complain on this score, and actually several of the abler among them have declined the promotion offered to them because they could only get districts which did not offer much scope for private practice. However this may be, the Devolution Rules of 1920 have gone far behind the Functions Committee of 1918.[1] If Ministers cannot be trusted even in the matter of transfers and postings, it would be simpler, more logical and more intelligible to dispense with them altogether.

33. 'A Local Government shall employ such number of Indian Medical Service officers in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council,' (Devolution Rule 12). The officers belong to a military Service; and medical administration is a Transferred subject. Unlike other heads of departments the Inspector-General of Civil Hospitals may not be appointed by the Governor except with the concurrence of the Government of India. Sir John Hewett protested against this arrangement as long ago as 1907 in the memorandum he communicated to the Royal Commission on Decentralization. This 'previous sanction' subsists even after a Minister has been made responsible for medical administration. A certain amount of authority was claimed by the Government of India in 1921 even in respect of I.M.D. [Indian Medical Department] officers in civil employ, officers whose salaries are votable. A lengthy correspondence ensued and when on Budget day in 1922 the Minister (Pandit Jagat Narayan) went before the Council with proposals pressed upon him by Delhi and Simla they were sharply attacked by the non-official members and defeated without a division after an elaborate apologia by the Inspector-General.

* * *

37. There are certain posts in departments dealing with Transferred subjects which are reserved for officers serving in departments dealing with Reserved subjects. For example, there is the office of Excise Commissioner. It must be filled by an officer of the I.C.S. It is regarded as being the perquisite of a senior magistrate and Collector and oftener than not, an officer is selected who is not thought fit for promotion to the more coveted position of Commissioner of a Division (although as one officer remarked, while it is easy to understand that a person may

[1] *Report of the Committee on the Division of Functions* (Lord Southborough), 26 February 1919. [Ed.]

not have the qualities essential for a successful Collector it is difficult to make out why anyone should be deemed unfit to be a Commissioner), but who may be too senior to remain a mere District Officer. In other words the convenience of the Government and not the public interest is (or was) the determining factor in the selection of the head of the department. With the concurrence of the Finance Member—the able officer who is Secretary both for Finance and Excise fully agreed with us—and His Excellency the Governor, it was decided towards the close of 1921 to appoint as Excise Commissioner the then Deputy Excise Commissioner who was both an expert (having put in many years of service in the corresponding department in Britain) and a man of administrative capacity and was besides a temperance reformer. He was appointed to officiate and a dispatch was prepared asking for the sanction of the Secretary of State to remove the post from the cadre of the I.C.S. and give liberty to the Governor acting with his Ministers to select which officer—I.C.S. or other—he might from time to time deem to be the best fitted therefor. At this stage the Finance Member and the Secretary both went on leave and the new Secretary, instead of submitting to the Governor the draft dispatch approved both by Sir Ludovic Porter and me, took it upon himself to send the case to the Chief Secretary on the ground that the proposal affected an all-India Service. This he did although the Chief Secretary's chief, the Finance Member, who was in charge of General Administration as well as Appointments, had already given his consent. The Chief Secretary interposed every obstacle he could. The case had to go before more than one subsequent meeting of the Government. When at last the dispatch was sent in a truncated form it was returned by the Government of India with discouraging advice. In the interval the Governor moved in sympathy away from me and in the direction of the Chief Secretary, and the final result is that we have the *status quo ante*.

* * *

40. I will not multiply instances. And I should further like to record that it should not be thought that they were very frequent. On the other hand there were many officers whose attitude towards the Ministers was correct and some who were cordial and helpful. And Pandit Jagat Narayan and I look back upon our association with them—and they included officers in our own as well as in the Reserved Departments—with pleasure and in some instances with a feeling of gratefulness. . . .

41. The rules of Executive Business impose upon the Secretary the duty and confer upon him the right of submitting to the Governor cases which in his opinion were of such importance that he should see them.[1] He should do so when in any important matter a Member of the Government did not accept the opinion of a Member of the Board of Revenue, the Commissioner of a Division or the head of a department and he could also do so when he himself was not satisfied with the decision of an H.M. The Secretary has his weekly interview with the Governor; the head of a department is seen by H.E. when requested for an interview. Both Secretaries and heads of departments are appointed by the Governor

[1] See pp. 67-8, above. [Ed.]

after consultation with the colleague concerned. Appointments to the more important of other offices are made by the Member of the Government concerned, but are subject to the Governor's approval. Every matter relating to all subordinate Services except variations of cadres and scales of salaries is in the hands of heads of departments. Either decisions are specifically reserved to the Governor, or they are subject to his approval, or they have to be submitted to the Governor because there is a difference between the head of a department and a Member of the Government, or they are so submitted because the Secretary elects to do so. It will be seen that the margin of discretion left to the Minister responsible to the Council is not dangerously wide. The system can work notwithstanding its inherent imperfections as long as the Governor is sympathetic and helpful and when the atmosphere is one of mutual trust and goodwill. Perhaps it can work, too, when a strong Governor selects a weak Minister. But do these conditions invariably exist? My experience was that it very much depended upon a Secretary's good humour whether ten or ninety per cent of cases were submitted for the Governor's approval and upon the Governor's general attitude or personal feeling towards a Minister at a given time whether he ordinarily supported or overruled him. I passed through every stage from a habitual 'the Hon. Minister is responsible and his view must prevail' and 'I must support the Hon. Minister' to being overruled in matters of varying degrees of importance and unimportance down to nominations to a library committee; ultimately prevailing in matters in which I was not prepared to be overruled only by making it clear that I would have to consider my position. A Governor and one or more colleagues not of their political persuasion and Secretaries and heads of departments and other superior officers to whom every act of Indianization or provincialization or political advance means something that reduces their own opportunities, are the chief under whom, the colleagues with whom, and the agency through which Ministers have to act, at the same time fulfilling their responsibility to the Legislative Council and satisfying their constituents and countrymen. The system has not worked well; it must break down. A constitutional Governor not belonging to the permanent Services, a responsible cabinet of M.L.C.'s [Member of Legislative Council] of identical ideals and sympathies with collective responsibility, and a rapid Indianization and also provincialization of the superior Civil Services, the rights of officers now in service being secured, can in my judgement be the only proper substitute for the present hybrid system.

(2) *Report of the Reforms Enquiry Committee, 3 December 1924*[1]

32. . . . We consider that there can be no doubt but that the members of the Services generally loyally co-operated with the Ministers in working the Reforms. There may have been a few instances in which this was not the case, but we believe they were exceptional. We consider that the evidence before us also goes to show that the members of the permanent Services did not hesitate to carry out any policy once it had been decided upon by the Ministers. In some cases we feel that the Ministers did not fully appreciate the position of the permanent Services

[1] Pars 32 and 43.

or sought to take a greater share themselves in the detailed work of a department than is normally expected from its political head. It was only to be anticipated that honest differences of opinion would arise between the heads of the permanent departments and the Ministers, and that the heads of the permanent departments would urge their own point of view with some tenacity. We believe, however, that for the most part they have been prepared to assist the Ministers fully in coming to conclusions and have loyally co-operated in carrying out their general policy. Any contrary conclusion, save in regard to the few exceptional cases to which we have referred, is not, we consider, supported by the answers given in examination by the witnesses themselves, or by other evidence produced before us. As was stated by one witness neither Members nor Ministers nor autocratic nor democratic administrators are exempt from occasional friction and unpleasantness.

* * *

43. . . . we should refer to another aspect of the evidence in regard to the permanent Services which has been placed before us. This point is referred to in the reports of several Local Governments, but we think that we can illustrate it best by a quotation of the words of the Government of the United Provinces :

> The spirit and the outlook of the Services are not what they were. It may be difficult to specify the precise extent to which they have been affected, or to disentangle the various causes. But of the broad fact there can be little doubt. In the heated political atmosphere of the first fifteen months after the inauguration of the Reforms, the European Services were the object of constant vilification and abuse in the Press and on the platform ; indeed, as will be seen from the published proceedings, in the Legislative Council also, where though criticism was more restrained, it was often hostile and prejudiced. During the more peaceful period, which followed the collapse of the campaign of disorder, matters have much improved : and from various quarters keen appreciation has been expressed of the capacity of European officers to handle a difficult or dangerous situation. But there is still a tendency to look very sharply into any mistakes or shortcomings of hard-pressed European officers, and to ignore their reasonable claims. More than one resolution has been passed which, if carried out, would have deprived them of appointments to fill which they had been recruited. It is not suggested that the Legislative Council has deliberately sought to inflict injustice on European officers. The constitution of the all-India Services is not well understood, and many members of the Legislature are influenced by the feeling (for which there is justification) that in the past Indians have not received their fair share of the higher appointments. The natural effect, however, of the attitude of the Legislature has been to create in the minds of Englishmen serving in India an impression of hostility and a feeling of insecurity, which makes it difficult for them to give of their best. There are distinct signs that the Services are losing their former keenness. Since they no longer have the power of shaping policy to the extent which they had,

> they no longer feel that the progress of the country depends upon their efforts, nor indeed that any efforts of theirs are likely to have abiding results. Enthusiasm and energy have also been sapped by financial pressure, and by the cloud of uncertainty which hangs over the future of the country to which they have given their lives.

We consider that this extract points to a regrettable feature of the present conditions prevailing in India. We are impressed with the desirability in the interests of India's constitutional development of securing contented permanent Services and a return to that keenness which, it is said, is being lost. None of us would deny that during the months following the inauguration of the Reforms the Services were subjected to much unjust criticism and to a great deal of annoyance. We are, however, of opinion that criticism of the Services is inevitable in the present conditions of India. The extent to which the permanent official may by his advice influence policy is apt to concentrate criticism on him which should rightly attach to the Government which adopts the policy. This is unjust and unfair but, in view of the position which the Services have held in the past, is not altogether unnatural. It is possible that the Services do not sufficiently make allowance for this aspect of the case. Criticism they will inevitably encounter in the exercise of their functions, and some of this criticism may be quite unjust. That is perhaps a consequence of a democratic or a partially democratic Constitution. It is when that criticism takes a racial bias that we all consider that it must be wholly condemned.

(3) *Minority Report of the Reforms Enquiry Committee, 3 December 1924*[1]

While it is possible to understand the feeling that the Services have no longer the power of shaping policy to the extent that they had or their feeling that the progress of the country no longer depends upon their efforts, or that any efforts of theirs are not likely to have abiding results, it may as well be pointed out here that this is the inevitable consequence of the transference of power, limited as it is, to local Legislatures ; and indeed it constituted the *raison d'être* of the Reforms. The Imperial Services in the past have been mainly responsible for the shaping of policy in India and the combination of political and administrative functions in the Services is to our mind mainly responsible for the frequency and strength of the criticism to which they have been exposed in the past. The immunity which Public Services in England or the Dominions enjoy from hostile or unfriendly criticism cannot, we are afraid, be secured for the Services in this country in any large measure unless, among other things, the relations of the Services to the Legislatures are brought into closer approximation with those prevailing in England or the Dominions. When it is recognized by the public that the Services are mere instruments for the execution of the policy of the Government and that they have no political functions to discharge, we think they will cease to be the targets of that criticism which is pointed out as an undesirable feature of the present political conditions in India ; for when that stage is reached, it will be the responsible Ministers and not the Services who will have to bear the brunt of public criticism.

[1] *Report of the Reforms Enquiry Committee* (1924), pp. 161-3.

As matters stand at present, the control of the Services or their recruitment does not rest with the Local Governments or with the Government of India. It seems to us, therefore, that in the best of circumstances the present position is apt to give rise at times to friction and a feeling of mutual distrust which cannot be conducive to efficient and good administration.

. . . Our own conclusion upon a review of the evidence is that generally speaking the attitude of members of the Services was one of loyal co-operation, though in a few exceptional cases it might not have been so. At the same time, we are bound to point out that our analysis of the situation leads us to think that two important factors have operated to affect the relations of the Services to the Ministers. The first is the natural difference between the points of view of members of the permanent Services and the Ministers in regard to questions of policy, inasmuch as they represent different schools of thought, one bureaucratic and the other popular. The second factor is that under the present Constitution the Ministers feel that the Services can look to higher powers for the enforcement of their views in cases of differences, which tends to undermine the Ministers' authority.

We venture to think that, under the present system, the entire Constitution, the methods of recruitment and control of the Services are incompatible with the situation created by the Reforms and the possibility of their further developments. The present organization of the Services came into existence when admittedly the centre of political gravity was outside India and when the Services took a leading part in the shaping of policy. Those conditions have appreciably changed and will change still further, and it is but natural that there should be dissatisfaction among the Services with their position and also among the Legislatures with the restraints and limitations imposed on their powers in relation to the Services. We think that the question of the Services is inseparably connected with the question of constitutional development in India and we are of the opinion that the relation of the Services to the Legislatures cannot be put on a satisfactory and enduring basis by a mere amendment of the rules or even by the delegation of certain powers under section 96B. We desire to repeat what we have already stated, that the position of the permanent Services in India should be placed on the same basis as in England; we fully realize the imperative necessity of safeguarding the interests of the Services. Whether this can be achieved by the passing of an Act by the Imperial Parliament or by the Indian Legislature or by the incorporation of special provisions for the protection of the rights and interests of the Services in the future Constitution of India, are questions on which we recognize there may be differences of opinion. Whichever method is adopted, we are persuaded that the question calls for an effective and early solution.

(4) *Report of the Indian Statutory Commission, 12 May 1930*[1]

Effect of the Reforms on the Services

292. The Reforms had important effects on the Services and, in particular, upon their European members. Criticism of the Executive

[1] Vol. I, pars 292-6 and 300.

by questions is a normal function of a Legislature. But in the early years of the Reforms, members of the Provincial Councils had not learned the limits within which this method of criticism can usefully be employed —and to some extent this is still true. Questions were often directed to details of administration which at Westminster would be held to be best left to the directing heads of the departments. And they were often aimed at individual members of the services rather than at Government, and in particular at members of the Indian Civil Service and the Indian Police Service.

Persistent criticism of this kind inevitably had a discouraging effect on Services accustomed to a traditional respect. But there were other factors which aggravated their troubles. The non-co-operation movement of 1920-2 made the work of the head of the District and the police officials in some areas extraordinarily difficult. Nothing could be more depressing than the loss of the confidence of the common people who had always looked to the District Officer for help in trouble. And at its worst the unrest involved officers and their families in personal discomfort and even in serious danger. Moreover, the economic position of the Services was at this time a source of great anxiety to them. The financial stringency of the post-war years made it difficult for the Government of India to adjust their emoluments to the new level of prices, and there can be no doubt that many officers, in particular British officers with heavy obligations for the education of their children, were very seriously embarrassed.

293. The Joint Select Committee on the Government of India Bill did not, of course, foresee the non-co-operation movement, or the economic strain on the Services. But it had anticipated that there might be officers in the Service to whom the new conditions would be so repugnant that they would wish to retire. The remarks of the Committee in this connexion embody a principle which is as important now as it was then :

> The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause[1] to that end. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his Ministers and the officers through whom they will have to work. But if there are members of the Service whose doubts as to the changes to be made are so deeply rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service.

294. In accordance with these recommendations, the Secretary of State in Council adopted a scheme under which all-India officers, selected for appointment before 1st January, 1920, and not permanently employed

[1] Section 96B of the Government of India Act, 1919.

under the Government of India, were allowed to retire before they had completed the normal full service, on a pension proportionate to their length of service. This afforded a way out of the Service to a considerable number of officers who were suffering under the accumulation of disabilities described above. By 1922, 200 all-India Service officers had retired under these special terms, and by 1924 the number had risen to 345. By far the greater number were officers of from 10 to 25 years' service, whom India could ill spare.

This exodus had a secondary effect which was equally serious. Recruitment in Britain for the all-India Service was suspended during the War, and the tradition that India offered a career for young men had hardly begun to revive, when it was confronted by the outspoken discontent of the Services in India and the premature retirement of many officers whose records and capacity were above question. It is not surprising that the sources of recruitment in this country practically dried up.

While this situation was developing within the Services Indian political opinion concentrated on two points. The all-India Services were at this time mainly European in composition. Rules prescribing a progressive rate of Indian recruitment had been adopted, but the Preamble to the Act of 1919 declared 'the increasing association of Indians in every branch of the Indian administration' to be the policy of Parliament, and Indian opinion did not accept as adequate the rate of Indianization that had been established. It was, moreover, contended in some quarters that the recruitment and control of any Service by the Secretary of State should cease altogether.

Recommendations of the Lee Commission

295. These difficulties led to the appointment of the Royal Commission on the Superior Civil Services in India,[1] of which Lord Lee of Fareham was Chairman. It reported in 1924, and save in detail its recommendations were accepted by the Secretary of State in Council and have been put into force. We summarize them in so far as they are relevant to questions on which we shall have to make recommendations.

The all-India Services with which the Lee Commission was primarily concerned, and their strength at the time of the Report are shown in the following table :

(1) Indian Civil Service	1,350
(2) Indian Police Service	732
(3) Indian Forest Service (including the Forest Engineers Service)	417
(4) Indian Service of Engineers (comprising an Irrigation Branch and a Roads and Buildings Branch) ..	728
(5) Indian Educational Service	421
(6) Indian Agricultural Service	157
(7) Indian Veterinary Service	54
(8) Indian Medical Service (Civil) ..	420
Total	4,279

[1] The term 'Superior' covered the all-India Services and central Services of corresponding status.

The first three of these Services and the Irrigation Branch of the fourth were operating in the Reserved field, and comprise the Services upon which public security and finance mainly depend. The Lee Commission, in these circumstances, recommended that the Secretary of State should continue to recruit for these Services, and that his control, with the safeguards which that control involves, should be maintained. These four Services—the Indian Civil Service, the Indian Police Service, the Irrigation Branch of the Indian Service of Engineers, and the Indian Forest Service outside Bombay and Burma—are now the only Services the recruitment to which is still on an all-India basis.

The last four of the Services in the table above, and also the Roads and Buildings Branch of the Service of Engineers operated in the Transferred field in every Province. So did the Forest Service in the two Provinces of Bombay and Burma. The Lee Commission recommended that the control of Ministers over some of these Services should be made more complete by closing the recruitment for them on an all-India basis. The officers already in these Services were free to remain, retaining their all-India status and privileges, but recruits for these branches of administration would in future be appointed by Provincial Governments and would constitute provincial Services. The Services dealt with in this manner were the Education Service, the Agricultural Service, the Veterinary Service, and the Indian Service of Engineers (Roads and Buildings Branch). But the Lee Commission did not make the same recommendation as regards the Indian Medical Service, though it also fell within the field transferred to Ministers. It is true that the Commission recommended that in this department, as in other Transferred Departments, the recruitment and control of civil medical personnel generally should lie with the Provincial Government on its Transferred side, but it recognized two important considerations which differentiated the medical Service from the others. These were :

(*a*) the necessity for maintaining an adequate reserve of medical men for the emergency of war, and

(*b*) the obligation which lay on the Secretary of State and the Government of India to maintain a supply of European medical men of high qualifications for the care of members of the European Services and their families.

The Lee Commission accordingly recommended that, to provide for these obligations, each of the Provinces should employ in its civil Medical Department a certain number of officers lent from the Medical Department of the army in India. Such officers, of course, receive their commissions from the Crown, and have rights which are incompatible with 'control' by Ministers in the sense in which that word is used in India.

The Commission in effect realized that the arguments for giving to the authority responsible for a department control over the Services working in that department might, and should, be set aside, if that were necessary to enable the Secretary of State or the Government of India to discharge a responsibility laid upon them by Parliament.

Increased Rate of Indianization

296. As has been explained, recruitment for the Services employed in the Transferred field was handed over to Provincial Governments,

and no restriction was placed upon them as to the source of their recruitment. Considerable delay took place in framing the machinery by which Provincial Governments exercise their powers of recruiting and controlling these Services, and recruitment has not proceeded very far ; but so far as it has gone it points to rapid Indianization.

In regard to the Indianization of Services which were still to be recruited by the Secretary of State, the Lee Commission reported as follows. For the Indian Civil Service, it recommended that 20 per cent of the superior posts should be filled by the appointment of provincial Service officers to 'listed posts', and that direct recruits in the future should be Indian and European in equal numbers. On this basis, it calculated that by 1939 half of the Service would be Indian and half European, allowing for Indians in listed posts.

For the Indian Police Service, direct recruitment was to be in the proportion of five Europeans to three Indians ; allowing for promotion from the provincial Service to fill 20 per cent of all vacancies, this would produce, it was estimated, a personnel half Indian and half European by 1949.

For the Indian Forest Service (in the Provinces in which 'Forests' is reserved), the recruitment proposed was 75 per cent Indian and 25 per cent European ; and for the Irrigation Branch of the Indian Service of Engineers, the Commission recommended direct recruitment of Indians and Europeans in equal numbers, with a 20 per cent reservation of appointments to be filled by promotion from the provincial Service.

* * *

British Recruitment in the Future

300. The Lee Commission dealt not only with questions of methods of recruitment and Indianization, but with the grievances of the Services themselves, and the special difficulties in the way of recruitment in England for all-India Services. Its proposals for the removal of Service grievances were generally accepted as adequate. Its recommendations about British recruitment were designed to remove apprehension as to the effect on an officer's career of any constitutional changes that might be made thereafter.

In 1924 when the Lee Commission reported, the concession of premature retirement extended only to all-India Service officers who had entered the Service before 1920 ; and it was to continue in force until the action proposed to be taken on the Report of the Statutory Commission was known. The position would then necessarily be reviewed. It had been held that those who entered after 1st January, 1920, must be assumed to have informed themselves of the nature of the constitutional change which had taken place, and its probable effect on their work and prospects. The Lee Commission, however, recommended that any British officers who were employed in the Reserved field should be free to retire on a proportionate pension, if at any time the department in which they were employed should be transferred to the control of Ministers responsible to the Legislatures. The option was to remain open for one year from the date of transfer to the control of Ministers.

The improvement in the financial position of the Services and the

safeguards for a career recommended by the Lee Commission, combined with an improvement in the political position in India, had two results. The retirements on proportionate pension decreased rapidly, and many officers who had taken leave preparatory to such retirement returned to duty. The effect on recruitment was equally good. Recruitment for the Indian Civil Service is now in a more healthy condition; and we are informed that men of the right type are coming forward in adequate numbers. We understand that Police recruitment also is in a good state. But recruits are difficult to obtain for the Irrigation Branch of the Indian Service of Engineers. There has been little recruitment required for some years in the Indian Forest Service, and it is hardly possible to estimate whether candidates could be readily found in considerable numbers.

(5) *Progress of Indianization: Composition and Strength of the all-India Services on 1 January 1933*[1]

The all-India Services consist of the Indian Civil Service; the Police; the Forest Service; the Service of Engineers; the Medical Service (Civil); the Educational Service; the Agricultural Service; and the Veterinary Service. Recruitment, however, by the Secretary of State to the Buildings and Roads Branch of the Service of Engineers, to the Educational Service, the Agricultural Service and the Veterinary Service ceased in 1924 on the recommendation of the Lee Commission. The composition and total strength of these Services on 1st January 1933, were as follows :

	Europeans	Indians	Total
Civil Service	819	478	1,297
Police	505	152	665[2]
Forest Service	203	96	299
Service of Engineers	304	292	596
Medical Service (Civil) ..	200	98	298
Educational Service	96	79	175
Agricultural Service	46	30	76
Veterinary Service	20	2	22
	2,193	1,227	3,428

XIII. The Indian Statutory Commission on the Public Services Commission, 27 May 1930[3]

Constitution and Functions of Central Public Service Commission

337. On the recommendation of the Lee Commission a Central Public Service Commission was set up in 1926 for the all-India and the higher Central Services. Its constitution and functions are laid down in statutory rules.

In accordance with section 96C of the Government of India Act,

[1] *Report of the Joint Committee on Indian Constitutional Reforms* (Session 1933-4), par. 277.

[2] Including 8 officers who had not been classified in either category.

[3] *Indian Statutory Commission Report*, vol. II, pars 337-8.

its members are appointed by the Secretary of State in Council for a term of five years and cannot be removed before the expiry of their term except by his order. The Chairman is not eligible on vacating his office to hold any other post under the Crown in India. Two of the five members must have been in the service of the Crown of India for at least ten years.

The Commission advises the Government of India on all recruitment questions; it conducts all competitive examinations held in India for the Services concerned and arranges the candidates in order of merit. When recruitment is made by selection it considers the applications, interviews the candidates and submits to Government a list of them in order of preference. When promotions are made from a provincial to an all-India Service it considers the claims of the candidates nominated and advises the Governor-General in Council whether their qualifications are sufficient and whether they have the character and ability required for the Service to which it is proposed to appoint them; and finally it arranges them in order of preference.

The functions of the Commission extend primarily to the all-India Services and the higher Central Services, but the statutory rules provide that it may recruit for provincial Services if the Provincial Governments wish it to do so. Provincial Governments have not, however, made use of the Commission for provincial recruitment.

Members of the all-India Services have certain statutory rights of appeal to the Governor-General in Council and to the Secretary of State in Council, e.g. they may appeal against an order of the Provincial Government involving reduction to a lower post, the withholding of promotion, or suspension from office. Before the Governor-General in Council considers any such appeal he must consult the Public Service Commission in regard to the order to be passed on it. In the same way, before he transmits appeals to the Secretary of State, he must, unless he has had it at an earlier stage, take the opinion of the Commission.

Certain conventions have been established which add to the weight of the Commission's findings. We are informed that in no single instance has the Government of India acted contrary to the advice of the Commission in making appointments. It may, however, require the Commission to select candidates with particular qualifications, or from a particular community. In regard to the Commission's quasi-judicial consideration of appeals, it has been established that, though the advice of the Commission is not formally binding on the Government of India, it shall be accepted save in exceptional circumstances.

Public Service Commissions for the Provinces

338. The Lee Commission refrained from recommending the extension of the Central Public Service Commission's control to the provincial Services, for it recognized that any such proposal would be unacceptable to the provinces. But it was concerned for the security of the provincial Services and recommended that the provinces themselves should pass Public Service Acts to regulate recruitment and reduce the risk of political interference. The only province which has legislated is Madras, where a Public Service Commission Act was passed in 1929.

This Act is framed on the lines of the statutory rules for the Central

Commission. Members are appointed, and may be removed from office, by the Governor in Council. An order of removal requires the personal concurrence of the Governor. A member on appointment is required to give an undertaking that he will not during or after his service on the Commission accept any other office under the Crown in India except an appointment on the Central Public Service Commission, or the office of Chairman of the Madras Commission itself. The functions of the Commission do not of course extend to the members of the all-India Services employed in the Madras Presidency, who are still the concern of the Central Commission. The Madras Commission is concerned with the provincial and subordinate Services and in regard to their recruitment and discipline its functions are similar to those of the Central Commission in relation to the all-India Services. It is specifically laid down that the Commission shall observe any rules made by the Madras Government regarding the constitution of, or recruitment to, any provincial or subordinate Service.

XIV. Reservation of Posts for Minorities and Backward Classes[1]: Government of India, Home Department Resolution dated 4 July 1934[2]

Section I. General

In accordance with undertakings given in the Legislative Assembly the Government of India have carefully reviewed the results of the policy followed since 1925 of reserving a certain percentage of direct appointments to Government service for the redress of communal inequalities. It has been represented that though this policy was adopted mainly with the object of securing increased representation for Muslims in the Public Services, it has failed to secure for them their due share of appointments, and it has been contended that this position cannot be remedied unless a fixed percentage of vacancies is reserved for Muslims. In particular, attention has been drawn to the small number of Muslims in the Railway Service, even on those railways which run through areas in which Muslims form a high percentage of the total population.

The review of the position has shown that these complaints are justified, and the Government of India are satisfied by the inquiries they have made that the instructions regarding recruitment must be revised with a view to improving the position of Muslims in the Services.

2. In considering this general question the Government of India have also to take into account the claims of the Anglo-Indians and domiciled Europeans and of the Depressed Classes. Anglo-Indians have always held a large percentage of appointments in certain branches of the Public Service, and it has been recognized that in view of the degree

[1] Section 96A of the Government of India Act, 1919, provided as follows: 'No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.' Reservation of posts for minorities and backward classes was, however, considered to be *intra vires*. [Ed.]

[2] *Report of the Joint Committee on Indian Constitutional Reform* (Session 1933-4), vol. II, *Records*, pp. 315-18.

to which the community has been dependent on this employment, steps must be taken to prevent in the new conditions anything in the nature of a rapid displacement of Anglo-Indians from their existing position, which might occasion a violent dislocation of the economic structure of the community. The instructions which follow in regard to the employment of Anglo-Indians and domiciled Europeans in certain departments are designed to give effect to this policy.

3. In regard to the Depressed Classes it is common ground that all reasonable steps should be taken to secure for them a fair degree of representation in the Public Services. The intention of the caste Hindus in this respect was formally stated in the Poona Agreement of 1932 and His Majesty's Government in accepting that agreement took due note of this point. In the present state of general education in these classes the Government of India consider that no useful purpose will be served by reserving for them a definite percentage of vacancies out of the number available for Hindus as a whole, but they hope to ensure that duly qualified candidates from the Depressed Classes are not deprived of fair opportunities of appointment merely because they cannot succeed in open competition.

4. The Government of India have also considered carefully the position of minority communities other than those mentioned above and are satisfied that the new rules will continue to provide for them, as at present, a reasonable degree of representation in the Services.

5. The Government of India propose to prescribe annual returns in order to enable them to watch the observance of the rules laid down below.

Section II. Scope of Rules

6. The general rules which the Government of India have with the approval of the Secretary of State adopted with the purpose of securing these objects are explained below. They relate only to direct recruitment and not to recruitment by promotion, which will continue to be made as at present solely on merit. They apply to the Indian Civil Service, the Central Services, Class I and Class II, and the Subordinate Services under the administrative control of the Government of India, with the exception of a few services and posts for which high technical or special qualifications are required, but do not apply to recruitment for these Services in the Province of Burma. In regard to the railways, they apply to all posts other than those of inferior servants or labourers on the four State-managed railways, and the administrations of the Company-managed railways will be asked to adopt similar rules for the Services in these railways.

Section III. Rules for Services recruited on an all-India basis

7. (1) For the Indian Civil Service and the Central and Subordinate Services, to which recruitment is made on an all-India basis, the following rules will be observed :

(i) Twenty-five per cent of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims and $8\frac{1}{3}$ per cent for other minority communities.

(ii) When recruitment is made by open competition, if Muslims

or the other minority communities obtain less than these percentages, these percentages will be secured to them by means of nomination ; if, however, Muslims obtain more than their reserved percentage in open competition, no reduction will be made in the percentage reserved for other minorities, while if the other minorities obtain more than their reserved percentage in open competition no reduction will be made in the percentage reserved for Muslims.

(iii) If members of the other minority communities obtain less than their reserved percentage in open competition and if duly qualified candidates are not available for nomination, the residue of the $8\frac{1}{3}$ per cent will be available for Muslims.

(iv) The percentage of $8\frac{1}{3}$ reserved for the other minorities will not be distributed among them in any fixed proportion.

(v) In all cases a minimum standard of qualification will be imposed, and the reservations are subject to this condition.

(vi) In order to secure fair representation for the Depressed Classes duly qualified members of these classes may be nominated to a Public Service, even though recruitment to that Service is being made by competition. Members of these classes, if appointed by nomination, will not count against the percentages reserved in accordance with clause (i) above.

(2) For the reason given in paragraph 2 of this Resolution the Government of India have paid special attention to the question of Anglo-Indians and domiciled Europeans in gazetted posts on the railways for which recruitment is made on an all-India basis. In order to maintain approximately their present representation in these posts the Anglo-Indian and domiciled community will require to obtain about 9 per cent of the total vacancies available to members of Indian communities. The Government of India have satisfied themselves that at present the community is obtaining by promotions to these gazetted posts and by direct recruitment to them more than 9 per cent of these vacancies. In these circumstances it has been decided that no special reservation is at present required. If and when the community is shown to be receiving less than 9 per cent of these vacancies it will be considered what adjustments in regard to direct recruitment may be required to safeguard their legitimate interests.

Section IV. Rules for Services recruited locally

8. In the case of all Services to which recruitment is made by local areas and not on all-India basis, e.g. subordinate posts in the Railways, Posts and Telegraphs Department, Customs Service, Income-tax Department, etc., the general rules prescribed above will apply subject to the following modifications :

(1) The total reservation for India as a whole of 25 per cent for Muslims and of $8\frac{1}{3}$ per cent for other minorities will be obtained by fixing a percentage for each Railway or local area or circle having regard to the population ratio of Muslims and other minority communities in the area and the rules for recruitment adopted by the Local Government of the area concerned.

(2) In the case of the Railways and Posts and Telegraphs Department and Customs Service in which the Anglo-Indian and domiciled European community is at present principally employed, special provisions described in the next paragraph are required in order to give effect to the policy stated in paragraph 2 above.

9. (1) (*a*) The Anglo-Indian and domiciled European community at present hold 8·8 per cent of the subordinate posts on the Railways. To safeguard their position 8 per cent of all vacancies to be filled by direct recruitment will be reserved for members of this community. This total percentage will be obtained by fixing a separate percentage (i) for each railway having regard to the number of members of this community at present employed, (ii) for each branch or department of the Railway Service, so as to ensure that Anglo-Indians continue to be employed in those branches in which they are at present principally employed, e.g. the Mechanical Engineering, Civil Engineering and Traffic Departments. No posts in the higher grades of the subordinate posts will be reserved, and promotion to these grades will be made, as at present, solely on merit.

(*b*) The reservation of 25 per cent for Muslims and 8 per cent for Anglo-Indians makes it necessary to increase the reservation of $33\frac{1}{3}$ per cent hitherto adopted for all minority communities, in order to safeguard the interest of minorities other than Muslims and Anglo-Indians. It has been decided, therefore, to reserve for them 6 per cent of vacancies filled by direct recruitment, which is approximately the percentage of posts held by members of these communities at present. This total reservation will be obtained in the manner prescribed in paragraph 8(1) of this Resolution and will not be further subdivided among the minority communities.

(2) In the Posts and Telegraphs Department the same principles will be followed as in the case of the Railways for safeguarding the interests of the Anglo-Indian and domiciled European community, which at present holds about 2·2 per cent of all subordinate posts. It has been ascertained that if a reservation is made for this community of 5 per cent of the vacancies in the branches, departments or categories which members of this community may reasonably be expected to enter, it will result in securing for them a percentage equal to slightly less than the percentage of subordinate posts which they at present hold. In the departments or branches in which a special reservation is made for Anglo-Indians, the reservation of vacancies for other minorities will be fixed so as to be equal approximately to the percentage of subordinate posts at present held by them. The total reservation for Anglo-Indians and other minority communities, other than Muslims, will in any case be not less than $8\frac{1}{3}$ per cent.

(3) Anglo-Indians are at present largely employed in subordinate posts in the Appraising Department and in the superior Preventive Service at the major ports. For the former department special technical qualifications are required, and in accordance with the general principles indicated in paragraph 6 it will be excluded from the operation of these rules. In the Preventive Service special qualifications are required, and the present system of recruitment whereby posts are reserved for Anglo-Indians will be maintained.

XV. The Governor—Exercise of the Special Powers vested in him

(1) *Memorandum by Mr C. Y. Chintamani to the Reforms Enquiry Committee, 10 August 1924*[1]

8. . . . Where in the opinion of the Governor a Minister acts unreasonably and to the detriment of the interests specially committed to His Excellency's charge by the Instrument of Instructions, where according to the information in his possession a Minister acts contrary to the views and wishes of his master the Legislative Council and where he is not amenable to the Governor's good advice, he can be asked to resign or even dismissed as he holds office during the Governor's pleasure. But he should, while he is deemed fit to hold office, be master in his own household jointly with his colleague or colleagues in the administration of the Transferred subjects. This rightful position of his has not been secured to him.

9. From all that I have observed and experienced I cannot resist the conclusion that the present Act and Rules have endowed the Governors of Provinces with quite excessive power and discretion. They are not constitutional governors as in the Dominions and yet the Legislative Councils are forbidden to criticize them and their acts and omissions as if they were such, as if they had no personal responsibility for what their Governments do or fail to do, as if they always acted upon the advice of responsible Ministers. It is my conviction that under the present dispensation the manner in which the system works in a Province is almost entirely what its Governor makes it. In saying this I am not oblivious of the situation in two of the Provinces.[2] But there the Governors' position is quite clear and everyone can tell whether and to what extent they are responsible for the situation. I am persuaded that those cases do not affect the correctness of my statement.

(2) *Report of the Reforms Enquiry Committee, 3 December 1924*[3]

34. The real answer to the question of whether a Governor's control over his Ministers has been excessive is to be found in the number and nature of the cases in which it has been exercised. Mr Kelkar more than any other witness suggested a large degree of interference by the Governor. He himself, however, admitted that His Excellency the Governor of the Central Provinces generally did not attempt to overrule him so far as broad questions of policy were concerned. His objection was that he was overruled in what he regarded as details of the administration; but he stated that only in one class of cases did he observe anything approaching a settled policy, namely, his proposals with regard to punishment, withholding increments, pensions, etc., of Imperial Service officers. We observe in connexion with this evidence that the Central Provinces Government have caused their records to be searched and have provided us with a statement summarizing all the cases, fourteen in number, in which the Governor has overruled his Ministers. The

[1] *Report of the Reforms Enquiry Committee* (1924), appendix 5, pp. 277-8.

[2] Perhaps the reference is to Bengal and the Central Provinces where the Governors' rule prevailed for a time. [Ed.]

[3] Pars 34-5, 60 and 101.

statement will be found in Appendix No. 5 to our report. Out of the 14 cases the first 8 relate to the pay, pension or posting of officers of the all-India Services, in regard to whom the Governor is, of course, by his Instrument of Instructions, vested with particular responsibility. The Central Provinces Government in fact state that some of the friction which occurred in connexion with service questions was caused by the desire of one Minister to promote and transfer Indian members of the Services to posts irrespective of their claims on account of seniority or merit, on the ground that it was necessary to give Indians the amplest opportunities for training. They state that the Governor refused to accept such recommendations to the detriment of the European members of the Services, holding that promotions and transfers should be made irrespective of the race of individual members. Mr Harkishen Lal suggested in his oral evidence that the Governor under the Constitution had complete power to do as he liked. Mr Chintamani says that he himself passed through every stage in regard to the exercise by the Governor of his powers, from ' the Honourable Minister is responsible ' and ' I must support the Honourable Minister ', to being overruled in matters of various degrees of importance and unimportance. Sir Surendra Nath Banerjee, however, says that he does not remember any order of his which was set aside by the Governor. The occasions on which there were differences of opinion were not many, these were discussed, and the Governor and he were able to come to an agreement. Finally, Sir Chimanlal Setalvad, after suggesting that the Governor claimed a greater power of interference than was intended, concludes that the Ministers, by firmness and with the ultimate weapon of resignation in the background, fairly succeeded in giving effect to their own policy in the administration.

35. . . . The number and the nature of the cases in which the Ministers' proposals were interfered with is a question of evidence. Applying this test we are not satisfied that there was really excessive interference with the Ministers' policy, though the attitude adopted by some Governors may have differed from that adopted by others. It is possible also that in some cases the Governor approached a particular proposal of the Minister from the point of view of what was best to be done in the circumstances of the case rather than from the point of view of how that proposal might accord with the Minister's general policy in the Legislature.

* * *

60. . . . It was intended that the administration of Transferred subjects should be conducted on the basis of the responsibility of the Ministers to the Councils and of the members of the Councils to the electorate. In the administration of Central subjects and of the provincial Reserved subjects it was not, however, intended that the Government should be responsible to the Legislatures, though a large measure of financial control has been vested in them in regard to such subjects. In the Legislatures an elected majority was provided and, as is only natural, that majority is permanently critical, and in the second Councils in certain Provinces has been definitely obstructive to Government. Colonial experience was of course well known to the authors of the Montagu-Chelmsford Report and to Parliament. It was indeed doubtless

with due regard to that experience that provisions were included in the constitution of an affirmative nature as well as the normally negative provision of the veto. These provisions related to the powers of the Legislature both in regard to legislation and in regard to the appropriation of supply. It was intended also that those provisions should be used, but as stated by the Government of Assam '"arbitrary" is the mildest epithet applied to a Governor who certifies a demand; he is accused of flouting the wishes of the representatives of the people and goading them to revolt'. The dictum of the Joint Committee that these powers were intended to be real is thus overlooked, whether the powers are exercised by the Governor in regard to the Provincial Councils or by the Governor-General in regard to the Central Legislature. Though, in the Central Government at any rate, the instances in which these powers have been used have been very few indeed, yet we consider that these provisions in the Constitution must inevitably contribute to the difficulty of its harmonious working, however essential their existence may be.

* * *

101. . . . The Governor is empowered by sub-section (3) of Section 52 of the Act to direct in regard to the administration of Transferred subjects that action shall be taken otherwise than in accordance with the advice of his Ministers. We agree that this control by the Governor over the Ministers is an essential part of the existing Constitution and that we are, therefore, unable, even if we desired to do so, to recommend that the limitation upon the powers of the Ministers imposed by it should be eliminated, and the Governor be reduced to the position of a constitutional Governor. The Joint Committee stated that the Governor should never 'hesitate to point out to the Ministers what he thinks is the right course or to warn them, if he thinks they are taking the wrong course. But if, after hearing all the arguments, Ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by Ministers, acting with the approval of a majority of the Legislative Council, but there is no way of learning except through experience and by the realization of responsibility.'

In deciding whether he should not accept the advice of his Ministers it was intended that the Governor should be guided by his Instrument of Instructions. We consider that the Instrument of Instructions does not entirely give effect to the view of the Joint Committee as embodied in the passage we have cited. Clause VI of the Instrument of Instructions,[1] for example, merely provides that the Governor shall have due regard to the relations of the Minister with the Legislative Council and to the wishes of the people of the Province as expressed by their representatives in the Council, and this does not indicate that the Governor should normally accept the advice of his Ministers which was, we think, the view of the Joint Committee. We accordingly recommend that clause VI

[1] See p. 54, above. [Ed.]

of the Instrument of Instructions should be redrawn so as to provide that, subject to a power of interference to prevent unfair discrimination between classes and interests, to protect minorities and to safeguard his own responsibility for Reserved subjects and in regard to the interests of the members of the permanent Services, the Governor should not dissent from the opinion of his Ministers.[1] In this connexion we would also refer to the existence of the power of resignation and in regard to it we recommend that provisions, as far as possible following the English practice, should be made in the legislative rules giving a Minister who has resigned the right to make in the Council a personal explanation of the causes of his resignation.[2]

(3) *Report of the Indian Statutory Commission, 3 December 1930*[3]

239. We have mentioned the natural reluctance to have recourse to the special powers of certification and restoration conferred on the Governor or the Governor in Council. It is a striking fact that the only instance in which a Governor has found it necessary to secure the passage of a provincial Bill by certification is the Bengal Criminal Law Amendment Act.

On a few occasions a Governor has returned a Bill for further consideration with useful results;[4] and there have been two or three instances of the use of the veto,[5] but none of these occasions had any special constitutional significance.

The powers of restoration of rejected demands for Reserved subjects have been fairly frequently used, with the notable exception of Bombay where the Government has always found it possible to accept the reductions made by the Legislature. In Burma, too, the power has only been used once. But in 1924-5 in the Central Provinces, as in Bengal, demands for grants were rejected wholesale, as part of the wrecking policy of the Swarajists, and had to be restored. Frequent, though not extensive, use of restoration has been necessitated elsewhere by the too common practice of rejecting a demand for a grant, instead of only moving a token reduction, as a means of attacking Government in connexion with some particular branch of administration on the Reserved side. Such attacks were undoubtedly often pressed home in a manner that the Council would have hesitated to adopt if it had not known that the Reserved powers could and would be used to prevent breakdown. But where 'cuts' were moved and carried for the purpose of securing economy, Government has frequently accepted the reduction.

Rejections of demands on the Transferred side (which could not be restored) have been less frequent. When they have occurred, they seem to have been usually directed by a desire to effect economy. In Bengal in 1924-5 the Swarajists succeeded in carrying considerable 'cuts' relating to staff in the education and medical departments; but the

[1] No action was taken on this recommendation by the Government of India pending the inquiry to be made by the Statutory Commission. [Ed.]

[2] This recommendation was accepted by the Government of India, and a new rule, 10A, inserted in the Provincial Legislative Council Rules by Notifications on 27 October 1926. [Ed.]

[3] Vol. I, pars 239-40.

[4] The most important cases are the Madras Religious Endowments Act and the Oudh Rent Act.

[5] e.g. The Malabar Tenancy Bill and Calcutta Municipal Amendment Bill.

Council subsequently voted supplementary demands, when it found that the staff had been placed under notice.

It will be remembered that the Governor also has an emergency power of authorizing expenditure, whether the subject is Transferred or Reserved. To a slight extent in Bengal, and on a large scale in the Central Provinces, this power has been used in connexion with Transferred Departments in order to reverse a decision of the Legislature. In the United Provinces and Madras, however, it has been found convenient to employ it fairly frequently for comparatively small amounts of expenditure arising out of unforeseen circumstances such as floods. Elsewhere it has not been used at all.

240. It is plain that nothing but absolute necessity for carrying on administration has evoked the use of special overriding powers and that the occasions for their use (though not unimportant) have been sporadic and limited, except in Bengal and the Central Provinces where they have at times had to be used in a wholesale manner. Outside these two Provinces, Government and the Legislature have usually agreed, or at any rate have not finally differed. But it is less easy to say whether Provincial Governments, in being guided normally by the wishes of Legislatures in which they did not command any assured majority, have been seriously hampered in their conduct of affairs.

XVI. The Indian Statutory Commission on the Composition of the Provincial Legislative Councils, 12 May 1930[1]

Composition of the Legislative Councils[2]

146. The Act of 1919 provides that at least 70 per cent of the Members of a Legislative Council shall be elected Members (in the case of Burma 60 is substituted for 70 per cent) and that not more than 20 per cent shall be 'official Members'. . . An 'official Member' is an official who is appointed by the Governor to serve on the Provincial Council. He is not necessarily a member of the Governor's Executive Council, though the Executive Councillors are among the official Members. Besides elected and official Members, there is a third stream of contribution to make up the whole, and this is provided through nomination by the Governor of non-officials. Nomination is resorted to for two purposes. In some cases it is the method adopted for securing a spokesman for a class or community which would otherwise go unrepresented. In other cases a nominated seat is filled by the Governor in the exercise of his general discretion, to redress inequalities or to fill up an undesirable gap. The Montagu-Chelmsford Report did not itself prescribe the exact composition of the Legislative Councils, but left this to be considered by a special Committee appointed for the purpose, which visited India under the presidency of Lord Southborough. The recommendations of this Franchise Committee,[3] which also covered the Central Legislature, are recorded in a bulky volume containing a number of appendices and

[1] *Indian Statutory Commission Report*, vol. I, pars 146, 149-52 and pp. 144-7.
[2] See Tables between pp. 128 and 129.
[3] *Indian Franchise Committee Report* (Lord Southborough), 26 February 1919. [Ed.]

presenting the results of a minute examination of the problems of franchise, distribution of seats, qualification of candidates, nomination and official representation over the whole area then under treatment. These recommendations were considered by the authorities and the approved arrangements were embodied in Electoral Rules, made under a section of the Act, after they had been considered and reported on by the Joint Select Committee of both Houses appointed to revise them. So far as the actual composition of the nine Legislative Councils is concerned, the existing distribution is as follows :

	1	2	3	4	5
	Statutory minimum	Elected	Nominated officials, *plus* Executive Councillors	Nominated non-officials	Actual total
Madras	118	98	7+4	23	132
Bombay	111	86	15+4	9	114
Bengal	125	114	12+4	10	140
United Provinces	118	100	15+2	6	123
Punjab	83	71	13+2	8	94
Bihar and Orissa	98	76	13+2	12	103
Central Provinces	70	55	8+2	8	73
Assam	53	39	5+2	7	53
Burma	92	80	14+2	7	103

The precise figures vary from time to time as between columns 3 and 4, since the number of official members is usually less than the maximum authorized.

* * *

Communal Electorates[1]

149. The Montagu-Chelmsford Report fully discussed the question of communal electorates.[2] It declared that they were opposed to the teaching of history ; that they perpetuated class division ; that they stereotyped existing relations ; and that they constituted ' a very serious hindrance to the development of the self-governing principle '. But, none the less, the joint authors felt constrained, so far as the Muhammadans were concerned, to admit this system into the Constitution they were framing, and to concede a similar arrangement to the Sikhs of the Punjab. The explanation is that the facts were too strong for them. The Muhammadans relied on past assurances which they regarded as vital to their interests, and which the community as a whole protested must not be withdrawn. They pointed to the fact that they were given special representation with separate electorates in 1909. Moreover, the argument for a separate Muhammadan electorate was materially strengthened by reason of an agreement which had been arrived at in 1916 between Hindu and Muhammadan leaders and which went by the name of the ' Lucknow Pact '. We have collected together in an Appendix at the end of this Part of our Report[3] more of the details of the history

[1] See Tables between pp. 128 and 129. [2] *Montagu-Chelmsford Report*, pars 227-32.
[3] Appendix V, ' Note on the History of Separate Muhammadan Representation ', *Indian Statutory Commission Report*, vol. I, pp. 183-9.

of these matters, for the subject of separate Muhammadan representation has to be closely studied in its historical aspect before a decision can be reached for the future. But it is sufficient in sketching the Montagu constitution to reproduce the conclusion at which the Report arrived, and to describe the arrangements by which this conclusion was carried into effect. 'Much as we regret the necessity,' ran the Report, 'we are convinced that so far as the Muhammadans at all events are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realization of a common citizenship.'[1] Accordingly, the voters in 'general' constituencies were divided into two lists, Muhammadans and non-Muhammadans. Territorial constituencies, usually based on an administrative district, or a group of districts, were carved out for each. Since Muhammadans are generally in a minority, a single Muhammadan seat often covers an area equal to several non-Muhammadan constituencies. In allocating the proportion of separate Muhammadan and non-Muhammadan seats, the Franchise Committee took the Lucknow Pact as a guide, with the important result that Muhammadan representation was considerably in excess of its population ratio in those provinces in which Moslems were in a minority. The authors of the Montagu-Chelmsford Report wrote that they could 'see no reason to set up communal representation for Muhammadans in any province where they form a majority of the voters',[2] but in the only two Provinces, Bengal and the Punjab, where they form a majority of the inhabitants, their comparative poverty has resulted in their having a minority of the votes, and the method of communal representation has been applied in those Provinces as elsewhere. Muhammadan representation in Bengal, based as in other Provinces on the Lucknow Pact, gives them fewer seats than they would receive if these were allotted in proportion to their voting ratio. In the Punjab the proportion of Moslem seats, though less than the population ratio, is somewhat higher than the voting ratio. The detailed figures for all Provinces are given in the table at the end of the Appendix on the History of Muhammadan Representation.

The Sikhs of the Punjab were also provided with a separate electoral roll and separate constituencies. The Sikhs are 11·1 per cent of the population of the Province, but they constitute 24·1 per cent of the voters and have 17·9 per cent of the communal seats. This allocation is not based on the Lucknow Pact, to which the Sikhs were not a party. The reason for the noteworthy contrast between the Sikhs' voting strength and their population percentage is that prosperous Sikh farmers are exceptionally numerous in many agricultural districts of the Punjab, and they probably also form relatively a higher percentage than other communities of those who secure the vote as ex-soldiers.

Representations of other Minorities

150. But the subdivision of the electorate did not stop at the separation from each other of great religious communities. Within the general body of 'non-Muhammadans', special arrangements were made to secure that a minimum of seats should be 'reserved' for sections of

[1] *Montagu-Chelmsford Report*, par. 231. [2] ibid.

the Hindu population which it was claimed might otherwise be under-represented. For example, in Madras, out of 65 seats allotted to non-Muhammadans, 28 are reserved for non-Brahmins ; in Bombay 7 out of 46 non-Muhammadan seats are reserved for ' Marathas and allied Castes '. This method of reservation of seats necessarily involves plural-member constituencies, for it works by securing that a candidate with the ' reserved ' qualification will be one of those returned, even if he is not at the top of the poll. It should be noted that reservation was resorted to in these instances to safeguard *majority* communities, who were thought to be likely to be under the dominance of a strongly entrenched minority. Its operation and effect in such cases do not, therefore, necessarily afford guidance as to the results which would follow from the reservation of seats as a means of protecting *minority* communities. This is a question to which we shall have to return in our second volume.

Members of the Depressed Classes vote, in the rare cases where they have the property qualification, on the non-Muhammadan roll, but provision had to be made for their further representation by nomination. In the Madras Council there are 10 members nominated by the Governor to represent nine named castes, which include practically all those generally known in the Province as Depressed Classes ; elsewhere the Governor nominates members to represent those whom he considers Depressed Classes in the following numbers : Central Provinces 4, Bombay and Bihar and Orissa 2 each, Bengal and the United Provinces one each. There are no such nominated members in the Punjab and Assam.

Nomination is also resorted to in order to secure representation of the workers in organized industry, three members being nominated for this purpose in Bombay, two in Bengal, and one in each of the other Provinces, except in the United Provinces and Madras, where there are none. At the instance of the Joint Select Committee, who desired that an effort should be made to secure a better representation of the wage-earning classes, a scheme was devised by the Bombay and Bengal Governments (though not recommended by them), for forming special constituencies in Bombay and Calcutta cities respectively for workers in certain factories in receipt of wages of defined amounts. The Joint Committee felt that these suggestions would afford only a very incomplete solution of the problem and might turn out to be unworkable ; so it advised against their adoption. As yet, nomination is the only method of securing special representation for organized labour that has anywhere been tried, so far as the Legislatures are concerned. An interesting experiment, however, has recently been made in Bombay City of electing certain municipal councillors indirectly by a body of delegates chosen by members of registered Trade Unions.

Separate electorates were also provided (although not contemplated by the Montagu-Chelmsford Report, which would have preferred nomination) for Indian Christians, Anglo-Indians and Europeans. When the Burma Legislative Council was constituted in 1923, a similar method was also adopted for Indians resident in Burma and for members of the Karen race. Indian Christians have 5 seats filled by this means in Madras ; Anglo-Indians 2 in Bengal, one in Madras, and one in Burma ; Europeans 5 in Bengal, 2 in Bombay, and one in each of the Provinces of

Madras, United Provinces, Bihar and Orissa and Burma. In Burma, the separate electorate of Indians fills 8 out of the 22 urban seats, and the Karens 5 out of the 49 rural seats. In Provinces in which separate electorates do not exist for Europeans, Anglo-Indians, or Indian Christians, they are each represented by one nominated member, except that there is no provision for their representation in Assam, and the Central Provinces has only one nominated member for Europeans and Anglo-Indians taken together, and none for Indian Christians.

In addition to the representation which Europeans secure in this way, they also find the opportunity for filling additional seats in the Councils in every Province through some of the places allotted to Chambers of Commerce, Trade Associations, and Mining and Planting Associations. Seats of this class vary in number from 15 in Bengal to 2 in the Punjab, totalling 51 in all. These electing bodies, which represent the directorates or managements of the great business interests of the country—and not the employees—are as a rule definitely or overwhelmingly either European or Indian, but a few are so constituted as to make it possible in practice for them to return either an Indian or a European. Out of the total of 51, about 30 to 32 are under present conditions ordinarily filled by Europeans.

Except in Burma and Assam, there are special seats in every Province, from six to three in number, filled by election by the big landholders. The Montagu-Chelmsford Report had expressed the view that ' where the great landowners form a distinct class in any province we think that there will be a case for giving them an electorate of their own '.[1]

University Seats

151. A university seat is provided in each Province, except Assam ; Bengal has two. University representation was first proposed in the time of Lord Dufferin, as one means for expressing such corporate opinion as then existed in the country, and it was included in the Indian Councils Act of 1892. The authors of the Montagu-Chelmsford Report wished to limit special electorates as much as possible, and doubted whether university representation needed to be retained ; they did not make any positive recommendation in either sense.[2] The Southborough Committee proposed both the retention of all existing university seats and the admission of certain new universities to the same privilege (making eight university seats in all), the electorate consisting, as heretofore, of the Senate and Fellows only. The view expressed by the Government of India was that the only result of retaining university seats would be ' to add to the representation of the professional classes and to do something to carry politics into academic circles '.[3] The Despatch also said : ' We can discern no real divergence of interests between the universities and the educated classes in general. If it were the case that the university seats were given to academic interest or high scholarship we should welcome their inclusion, but we cannot anticipate that the representatives whom they will return will be different in kind from those of the professional classes in general.'

[1] *Montagu-Chelmsford Report*, par. 232.
[2] ibid., par. 232.
[3] Fifth Despatch on Indian Constitutional Reforms, dated 23 April 1919.

The Joint Select Committee, however, retained university representation, but recommended the extension of the university franchise to all graduates of over seven years' standing, a recommendation to which effect has been given in the Electoral Rules.

Effect of Specialized Representatives

152. It is certainly a very striking thing that the effort to apply representative institutions to an Indian Province should result in the formation of a Legislature composed by making special provision for contributions from such a variety of sources. One result of such a method is that the contribution from a given source is practically fixed in amount; a community gets its guaranteed number of members and no more, save that a little common ground is provided by the landholder constituencies, certain trade seats, and the universities. The representatives of these last are almost invariably Hindus. Representation of rival communities and different interests is the only principle upon which it has been found possible to constitute, by the method of direct election, the legislative bodies of India, and this is the more significant as the authors of the Montagu-Chelmsford Report manifestly struggled against it.

* * *

XVII. Extension of Franchise and Representation of factory Labourers and Depressed Classes: Proposals by the Reforms Enquiry Committee, 1924, and the Action taken thereon[1]

A. *Recommendations by the Reforms Enquiry Committee, 1924*

The Indian Legislature

Special representation for factory labourers in the Legislative Assembly should be provided for, if Local Governments can make arrangements, by election, if not by nomination. (Paragraph 64.)

Provincial Legislatures

The representation of the Depressed Classes in the Provincial Councils should be increased, and the Local Governments should be asked to formulate proposals. The representation should be by election if Local Governments are prepared to recommend a system of election. (Paragraph 64.)

The representation of factory labourers in the Provincial Councils should be increased, and the Local Governments should be asked to formulate proposals. The representation should be by election if possible. (Paragraph 64.)

B. *Action taken by the Government of India upon the Recommendations*

1. It will be convenient to group these three recommendations together for the purpose of discussing the action taken on them.

[1] Memoranda submitted by the Government of India and the India Office.—*Indian Statutory Commission Report*, vol. IV, pp. 233-5.

In paragraph 63 of their report the Majority stated that they were unable to recommend any general modification of the franchise in either direction, either by extension or restriction. They affirmed the principle that the franchise should be as low as possible, provided that the electors have a proper appreciation of their duties and responsibilities in its exercise ; but stated that the capacity of the elector was at present, so they believed, mainly confined to a capacity to choose between the personal qualities of two or more candidates. If that was so, then the Majority considered that there could be no doubt that a general widening of the franchise, not accompanied by a corresponding increase in the number of seats would enhance the difficulty, because it would largely decrease the proportion of the electors acquainted with any of the candidates ; for that reason they were not prepared to recommend any great increase in the number of seats in the various legislative bodies.

To this general proposition they made certain exceptions, which they discussed in paragraph 64, in favour of the increased representation (*a*) of factory labour and (*b*) of the Depressed Classes. The Majority expressed their views in general terms, but made no precise recommendations as to the additional representation which should be granted, since they considered that each Local Government should be asked to formulate proposals.

2. The Minority discussed the franchise in Chapter VIII of their Report and expressed the opinion that in every Province the franchise should be carefully examined, and, wherever it admits of lowering, it should be lowered so as to secure the enfranchisement of a substantially large number of people.

With reference to the representation of the Depressed and working classes they stated that the correct principle to follow would be to lower the franchise so as to give them a chance through the open door of election in general electorates ; but where practical considerations pointed to a different conclusion, they suggested that for the next few years only special constituencies might be formed for them. The Minority cited the opinion of their colleague, Dr Paranjpye, that it should not be difficult to secure the representation of the Depressed and working classes in the Bombay Presidency by election from three or four districts.

Similarly as regards factory labour the Minority favoured their representation by election. They thought that, though still disorganized, labour was showing distinct signs of beginning to organize itself in urban areas.

3. The views both of the Majority and of the Minority were referred to the Provincial Governments and the whole question of the representation of factory labour and of the Depressed Classes was brought under careful examination. It will be noticed that the Majority opposed a general extension of the franchise, and gave prominence to opinions that the existing electorates are inexperienced, if not irresponsible. The Minority were reluctant to form special electorates and asserted the principle that the Depressed and working classes should be given their chance through the open door of election by a widening of the general electorate. Both sections of the Committee were prepared, in favour of the Depressed Classes and factory labourers, to abandon these general propositions ; but neither section advanced any reason for making an

exception to their principles save their belief that the need for further representation of these classes is generally recognized. There is no clear line of distinction between the castes which could be defined as Depressed and other castes of the agricultural community which are almost equally backward and of which very few members have votes, and it has been urged that politically the Depressed Classes are part of the greater body of agricultural tenants and labourers, already represented in the general electorates. Similar difficulty might be met in attempting to define factory labourers in a country where those who work in factories still retain their connexion with the land. At the same time while factory workers are unorganized and still little differentiated in aim or outlook from the general population, it would be difficult to justify the creation of any artificial means of enabling them to provide themselves with representatives of their own in the Legislatures.

By reason of the difficulties involved the Local Governments were unanimous against giving either labour or the Depressed Classes increased representation by election. As a result of the examination made of the question an addition was made of the following numbers of nominated seats in the Legislative Councils named.

Council	Additional seats for Labour	Depressed Classes
Madras	—	5
Bombay	2	1
Punjab	1	—
Central Provinces	1	2
	4	8

With these additions, adopted by notifications issued on the 9th August 1926, the present provision for the representation by nomination of labour and Depressed Classes in the various Councils stands as follows :

Council	Seats for Labour	Depressed Classes
Madras	—	10
Bombay	3	2
Bengal	2	1
United Provinces	—	1
Punjab	1	—
Bihar and Orissa	1	2
Burma	1	—
Central Provinces	1	4
Assam	1	—
	10	20

In the Legislative Assembly, until the elected seats were increased, the number of nominated Members could not be increased above the

existing figure. This in itself was sufficient to prevent action being taken to obtain increased representation for labour in the Assembly by nomination.

XVIII. Provincial Legislative Councils: Legislation, Budget and General Procedure: Provisions of the Government of India Act, 1919

[1][72D. (1) The provisions contained in this section shall have effect with respect to business and procedure in Governors' Legislative Councils.

(2) The estimated annual expenditure and revenue of the Province shall be laid in the form of a statement before the Council in each year, and the proposals of the Local Government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed:

Provided that

(*a*) the Local Government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a Reserved subject, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject; and

(*b*) the Governor shall have power in cases of emergency to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of the Province, or for the carrying on of any department; and

(*c*) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the Governor, communicated to the Council.

(3) Nothing in the foregoing sub-section shall require proposals to be submitted to the Council relating to the following heads of expenditure:

(i) contributions payable by the Local Government to the Governor-General in Council; and

(ii) interest and sinking fund charges on loans; and

(iii) expenditure of which the amount is prescribed by or under any law; and

[(iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

[1] Section 72D was inserted by pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

(v) salaries of judges of the High Court of the Province and of the advocate-general.][1]

If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the governor shall be final.[2]

(4) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his Province or any part of it or of another Province, and may direct that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

(5) Provision may be made by rules under this Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the Council, and as to the persons to preside over meetings thereof in the absence of the president and deputy-president, and the preservation of order at meetings ; and the rules may provide for the number of Members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in the Council, in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor in Council, but may, subject to the assent of the Governor, be altered by the local Legislatures. Any standing order made as aforesaid, which is repugnant to the provisions of any rules made under this Act, shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the Council, there shall be freedom of speech in the Governors' Legislative Councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such Council, or by reason of anything contained in any official report of the proceedings of any such Council.]

[1] For the above items the following was substituted by Section I (15 & 16 Geo. V, c. 83), and it came into effect as from 31 March 1924 :

(iv) Salaries and pensions payable to or to the dependants of
  (*a*) Persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;
  (*b*) judges of the High Court of the Province ;
  (*c*) the advocate general ;
  (*d*) persons appointed before the first day of April, nineteen hundred and twenty-four by the Governor-General in Council or by a Local Government to services or posts classified by rules under this Act as superior services or posts ; and

(v) Sums payable to any person who is or has been in the Civil Service of the Crown in India under any order of the Governor-General in Council, or of a Governor, made upon an appeal made to him in pursuance of rules made under this Act.

[2] The following was added at the end of Section 72D (3) by Section I (15 & 16 Geo. V, c. 83), and it came into effect as from 31 March 1924 :

For the purposes of this sub-section the expression 'salaries and pensions', includes remuneration, allowances, gratuities, any contributions (whether by way of interest or otherwise) out of the revenues of India to any provident fund or family pension fund, and any other payments or emoluments payable to or on account of a person in respect of his office.

[1][72E. (1) Where a Governor's Legislative Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any Bill relating to a Reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the Council have not consented thereto, be deemed to have passed, and shall on signature by the Governor become an Act of the local Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Council or (as the case may be) in the form recommended to the Council by the Governor.

(2) Every such Act shall be expressed to be made by the Governor, and the Governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local Legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.]

XIX. Provincial Legislatures at work

(1) *Ministers and Legislative Business : Memorandum by Mr C. Y. Chintamani to the Reforms Enquiry Committee, 10 August 1924*[2]

20. During nearly the whole of the first year it was the practice for cases relating to Council business to be circulated and the attitude to be taken by the Government towards non-official Bills and Resolutions to be considered and decided by the whole Government at joint meetings. And as often as not, it used also to be decided there which, if any, Member of the Government other than the Member in charge should speak in support of the Government position and occasionally a Member other than the Member in charge was actually constituted the spokesman of the Government. No dyarchical distinction was ever observed during that period of confidence and goodwill. All which has since been changed for reasons not known to Pandit Jagat Narayan or me. The change went so far that on one occasion so important as to be critical to Ministers the Finance Member sprung a surprise upon them by actually speaking in open Council against the position taken up by them—a position to

[1] Section 72E was inserted by pt i of Sch. II of the Government of India Act, 1919 (9 & 10 Geo. V, c. 101).

[2] *Report of the Reforms Enquiry Committee* (1924). Appendix 5, p. 284.

which the Governor and he had both assented earlier. And in connexion with the same measure, to which reference was made in an earlier part of this memorandum, there was active canvassing against the position taken by the Ministers with the approval of both the Governor and the Finance Member, by the other Member of the Executive Council and the secretary to Government who was and is acting as the Government whip, who was, too, and is still a secretary in departments under the control of the Ministers themselves. The canvassing was active and all but technically public and I cannot think could have been unknown to the Governor and the Finance Member. It was a measure on which it was known that the Ministers staked their official existence and to ensure the passage of which they remained in office notwithstanding several provocations to quit. If they succeeded in the end it was by dint of negotiation and of compromise effected in the face of the exertion of effort and influence to the contrary by the said Member of the Executive Council and the said secretary to the Government. It was possibly due to the encouragement afforded by a knowledge of the real attitude of the Governor in Council that another secretary to Government—this time the secretary in charge of the very department to which the Bill related—moved an amendment which the Minister in charge had instantly to repudiate and disown and which subsequently the said secretary withdrew '*at the request of the Hon. Minister*' as he took care to tell the Council.

(2) *The Indian Statutory Commission on Interdependence of Ministers and Members of the Executive Council in the Legislatures, 12 May 1930*[1]

235. We have already mentioned the rarity of an assured elected majority in support of Ministers. The effect produced has been profound. It is largely psychological and deserves careful analysis. Ministers are seen to be, and feel themselves to be, largely dependent on the official bloc; they are necessarily in close relation with the Reserved side of Government; and it has not infrequently happened that a Minister is subsequently appointed to be an Executive Councillor. All this helps to create a feeling that, when an elected member is appointed a Minister, he becomes a 'Government man', and Ministers themselves have seldom altogether escaped the effect of the instinctive opposition which is aroused by their association with 'Government', with the result that the ties between them and their supporters are weakened. It is far from being the case that the appointment of a leader of a group to ministerial office has increased his authority with his former followers.

There have also been reactions on the Reserved side of Government. Ministers, who owe so much to the support of the official bloc, endeavour to obtain for the Reserved side of Government the vote of elected members with whom they are specially associated, though they do not invariably succeed. It is, of course, important that this support should be given to the Reserved side, for otherwise it may find itself in a minority, and the Governor in Council is naturally unwilling to invoke, save as a last resort, special powers of restoration and certification. But this situation involves the consequence that the Reserved side of Government may be

[1] *Indian Statutory Commission Report* (1930), vol. I, par. 235.

much influenced by Ministers and their following. Decisions to be reached by the Governor in Council are affected by calculations of the probable attitude of ministerial supporters. The stronger the following of Ministers, the greater their influence on the Reserved side, and the theoretical distinctions involved in the idea of Dyarchy are likely to be blurred in practice. Thus the two halves of Government have been thrown into each other's arms through their relations with the Legislature no less than by the impossibility of conducting the administration in compartments. The resulting almost irresistible impulse towards a unification of Government has probably been all to the good from the point of view of the efficient conduct of business ; but the underlying and fundamental conception of the dyarchic system—complete ' responsibility ' of Ministers in a certain defined field, and in that field only—has become almost hopelessly obscured.

It would, of course, be an exaggeration to say that there was no difference in the attitude of the Councils towards Ministers and Executive Councillors. There has usually been distinctly less opposition to ministerial measures and to demands for grants on the Transferred side, but this has probably been largely due to the nature of the subjects assigned to each. The unpopular tasks of Government are left to be discharged by its official Members. Police or land revenue administration are not subjects likely to arouse enthusiasm and often involve measures of great unpopularity ; while for education, for health administration, and for other departments in the hands of Ministers, to which the term ' nation-building ' is so frequently attached, there is a very real keenness.

(3) *The role of the Official Bloc in the Provincial Legislatures*

(i) *Memorandum by Mr C. Y. Chintamani to the Reforms Enquiry Committee, 10 August 1924*[1]

24. . . . It is true that the nominated official Members form a small minority of the whole Council but as non-official Members are rarely present in full strength the official votes not infrequently determine the result of a division. This ought not to be. The freedom of vote which according to the Joint Select Committee's report should be theirs, is seldom accorded to them in fact and the voting is ordinarily by mandate. Even on a question on which the Governor made a public declaration that the Council would be a free agent in determining it the Government whip was more than ordinarily active—among other things he addressed a questionable communication to Members believed to be of a docile class, and the Governor in Council supported it when questioned in the Legislative Council—and official Members were forbidden even to abstain from voting. If the Ministers were of one opinion and the Governor in Council of another, the nominated official Members had all to vote with the latter including those serving in the Ministers' departments ; yes, once even when the subject happened to be a Transferred one. I hope it is superfluous to say that such things do not promote discipline and do not enhance the position of the Ministers. At least a majority of the nominated official Members would be glad to be excused from

[1] *Report of the Reforms Enquiry Committee* (1924), Appendix 5, pp. 285-6.

being Members of the Council as this interferes with their own work and necessitates late hours night after night to get through 'those files to which there is never an end' as Lord Carmichael plaintively said. Nor will the loss to the Members of the Government be appreciable—assuming that care is taken to appoint at least moderately competent men—as permanent officials as a class do not show a ready aptitude for public speech and debate and generally say either too much or too little to win the support of the Council. The leader of the Council having complained that one or more Government defeats were due to the speeches of heads of departments, Sir Harcourt Butler once ordered that no head of a department should speak in the Council except when expressly asked by his Honourable Member to do so. When required by a Member of the Government the head of a department can be asked to be within reach for consultation and advice. If I am not misinformed I believe some such arrangement exists in Parliament. My conclusion is that there should be no nominated official Members with the exception of the Government Advocate (the legal adviser should be he, not the Legal Remembrancer) and there should be as many Council Secretaries as there are Members of Government, selected from among the elected Members, to assist and relieve them in the Legislative Council. This will carry with it the further advantage of providing a supply of trained men to be later selected as Members of the Government.

(ii) *Report of the Indian Statutory Commission, 12 May 1930*[1]

228. . . . The authors of the Montagu-Chelmsford Report hoped for the establishment of a convention that official Members of the Legislative Councils should abstain from voting when Transferred subjects were under discussion, and on other matters should have freedom of speech and vote, except when the Government thought it necessary to require their support.[2] The Joint Select Committee thought that all official Members of Legislatures, except the Executive Councillors, should be free to speak and vote as they chose.

These theories have not proved practicable in the stress of working the new Constitution. It would obviously have been embarrassing, if not improper, to have officials openly differing from the Government they served, even if their votes were not necessary for the support of that Government, but actually the Reserved side was nearly always badly in need of their votes. A development which could not so easily have been foretold was that Ministers also frequently needed the support of the official votes. No Governor could let a Ministry, which had not forfeited his confidence, perish, or even suffer embarrassment, through the opposition or abstention of Members under his orders, Members, indeed, who were servants of the Government as a whole and often immediate subordinates of the Ministers. There have been one or two occasions on which the whips were taken off and officials voted as they pleased, and a few cases in which officials took a line of their own, but these were few and far between and of no constitutional significance. It became the universal practice for the officials in the Councils to vote

[1] Vol. 1, pars 228-9.
[2] *Montagu-Chelmsford Report*, par. 233.

with Government, whether the subject under discussion belonged to the Reserved or Transferred side. Government could, therefore, always rely on this small, but solid, block of votes.

Government could generally, though not always, rely also on the nominated non-official members. It may be remarked in passing that one of the objections to the system of nomination is the suspicion that the nominee will be more ready to support the Government, to which he owes his appointment and to which he must look for reappointment, than to be guided by the views of the interests which he represents. Government has also generally been able to secure the support of the non-official Europeans.

229. The importance of the existence of a Government bloc in the Councils was enormously increased by the fact that such following among the elected Members as the Ministers could command was seldom sufficient by itself to ensure them a majority.

In the first Councils, there was nowhere, except in Madras, a homogeneous ministerial party with an assured elected majority. Generally, each Minister could carry with him (though by no means always with complete certainty) the votes of a small group, in many cases held together mainly by personal ties, and the votes of the official bloc were exceedingly useful and sometimes essential to provide a majority for Ministers. In the United Provinces, the ministerial supporters were definitely in a minority, and Ministers depended not only on the official votes, but on the personal influence which the Governor carried with the landlord Members of the Council.

In the second Councils, the Swarajists were sufficiently powerful to wreck the Ministry in the Central Provinces as well as in Bengal. In the United Provinces two landlord Ministers now had an assured majority. . . . The Justice Party majority in Madras was considerably diminished, and the official bloc began to be a factor of importance to Madras Ministers, as it had been and continued to be in the other Provinces.

In the third Councils, the situation was one in which there was no legislature in which the official bloc was not an actual or potential balancing factor. The ministerial majority had again disappeared in the United Provinces.

There is, accordingly, no Province in which the official bloc has not at some time or other been of decisive value to Ministers, and in some Provinces there has never at any time been a sufficiently large or cohesive ministerial party to enable Ministers to ignore the assistance of their official supporters.

XX. The Electorate

(1) *The Indian Central Committee on the Reaction of Dyarchy on the Electorate, 18 October 1929*[1]

16. The Legislature was representative of a small electorate untrained in the arts of self-government. The natural ignorance of the voters was, however, in some respects compensated for by an organization which lent itself readily to political usage. Throughout India the masses of the people are accustomed to look to the leaders of their various

[1] *Report of the Indian Central Committee* (1929), pars 16-17.

communities for guidance in many of the ordinary affairs of their daily life. At election time, therefore, the task of the candidates was, in some respects simplified. They dealt with the leaders of the different communities while the latter, in turn, explained matters to their followers and influenced the direction of their votes. On the other hand, the system of Dyarchy involved candidates in certain difficulties. The chief interest of the average voter throughout the greater part of India was in matters falling within the purview of the Revenue and Irrigation Departments or connected with the administration of justice ; and hence there was, in many parts, a tendency on the part of the electors to regard their local representative rather as a channel through which to obtain redress of their grievances against the Reserved Departments than as a representative whose duty it was to care for their interests in the spheres in which responsibility had been entrusted to the Legislative Councils. To this extent Dyarchy was calculated to give the average voter a totally incorrect idea of the real implications of a system of responsible government.

Further evil consequences resulted from the fact that the local Legislatures had no direct responsibility for those departments which concern the most vital interests of the electors. There was a not unnatural tendency on the part of the latter to regard the Ministers as of inferior status to the Members of the Executive Council and to adopt an attitude of irresponsibility towards the new system of government. However wrongly they might exercise the franchise the bureaucracy was there to see that no real harm befell them. Thus, from the very earliest days of responsible government, the voter was deprived of the most powerful incentive to a wise and responsible use of his vote, because his most immediate interests were not involved in the exercise of the franchise.

17. Certain other influences, not directly arising out of the Reforms, were at work to render more difficult the task of the men who took upon themselves the burden of government. The masses of the people of India have long been accustomed to believe that England will never relax her hold upon the country : that she will always retain her army of occupation : that her agents will always be at hand to maintain law and order : and that no conscious effort towards this end is required on their own part. For generations they have been taught to look to a foreign bureaucracy to care for their needs ; they have been deprived of all incentive to think of the Government as an institution which it is the duty of every citizen to defend. In these circumstances it is difficult for the politically-minded and educated classes to convince the electors that there is any need for them to exercise their powers in a responsible manner. If those who are the natural leaders of the people of India are to be given a fair chance to educate their countrymen in the task of government, England must make it clear beyond the shadow of a doubt that she intends without delay to implement the undertaking given in August 1917. The most effective means of advancing the political education of the masses will be by conferring upon them real responsibility. Thus, they may learn by experience that if they fail to exercise wisely the political power conferred upon them, their own interests will suffer.

(2) *The Indian Statutory Commission on the Defects of the Franchise, 12 May 1930*[1]

203. The adoption of property qualifications as a basis for the franchise gave a predominance and sometimes a monopoly in the vote to certain classes of the population. Thus, though it is true that in an agricultural country like India the bulk of the population appears extremely homogeneous in its needs and aspirations, whole sections of the population came to be excluded from the franchise. Chief among these are nearly all the women and the general body of the poor. In exercising the option allowed to them of enfranchising women on the same terms as men, the provincial Legislatures have made a gesture of high significance. But so long as the qualification for the vote is almost entirely a property qualification, it will remain a gesture, because India's women do not own property in their own right. Apart from Burma, the proportion of women voters is almost negligible. The case of the poor is similar. The Depressed Classes in Madras have 15·5 per cent of the population ($6\frac{1}{2}$ millions), but provide only 4·1 per cent of the electorate ; in Bombay, with 8 per cent of the population, only 2 per cent of the electorate. In the Central Provinces, the Brahmin and the Bania have, in proportion to their numbers, not less than 100 times as many votes as the Mahar. The urban labourer is often a Depressed Class man, frequently migratory and always poor, and therefore largely fails to qualify for the vote. Another result of the undiluted property qualification is that the Punjab Land Alienation Act—the Act which precludes members of non-agricultural tribes from ousting members of agricultural tribes from their land—has a discriminatory effect on the enfranchisement of various classes. Again, junior members of undivided Hindu families, however high their standing and education, often have no property and pay no qualifying tax in their own right, and are thus excluded.

The Joint Select Committee recommended that there should be no alteration in the franchise (apart from its possible extension to women) for the first ten years. Otherwise it is possible that defects in the present electoral rules which might be removed without altering the general scheme of qualifications, might have been remedied already. We refer to such cases as the total exclusion of Punjab tenants—a class tilling nearly half the cultivated area of the province—of the under-tenants in Bengal and the Central Provinces, and of the million employees in the Assam tea-gardens.

(3) *The Indian Statutory Commission on Contact between Member and Voter, 12 May 1930*[2]

213. Except in the case of the last general election in the Madras Presidency, when both the Justice and Swaraj Parties adopted a list of candidates nearly equal to the number of seats, it has been the almost universal practice for the candidate to stand for election on his own individual responsibility. He has often chosen his party as seemed best to him after his nomination. The dependence of the candidate upon

[1] Vol. I, par. 203.
[2] Vol. I, pars 213 and 217.

his own resources for election, the far stronger appeal to the electorate of personality, community and local influence than of party or programme, and the continual shifting of party names and policies have made this inevitable. Latterly the Swaraj Party, on its evolution as an instrument of the Congress, has secured for itself an existing organization with members, funds, offices and other party paraphernalia in all parts of India ; as well as the support of a predominant proportion of newspapers and periodicals. No other party has any comparable organization. These movements are rudimentary and unsystematic. There are certainly signs in the presidency towns and in large cities that party organization may develop, but still everywhere the party rather supports than selects its candidates. In the rural areas, and particularly in the two predominantly rural Provinces in which the electorate is the most restricted—Bihar and Orissa and the Central Provinces—possession of property and local influence are indispensable to success ; communal affiliations are of great importance : personality and a record of past achievements are helpful : while political views and opinions on matters affecting the lives of the electors usually count for little.

217. Elections in Britain derive most of their interest and vitality from the fact that they are the arena for the real contest between a party in power and a party or parties aspiring to power, a contest for which all political activity is more or less a preparation. With the exception of the Justice Party in Madras, there has never been in India a government party which has appealed to the electorate on its record. The personal appeal, whether based on a zeal for service or on any other ambition, can be no substitute in the minds of the general population for the party contest and the political programme. In the absence of parties deeply interested in the results of their endeavours, there can be no steady preparation, no silent consolidation of opinion and no abiding enthusiasm. Even if such parties existed, the difficulties with which they would have to contend in India would be great. The voters in rural areas consist of unrelated groups of persons inhabiting innumerable scattered villages. Almost the only means by which the Member can reach the great majority of them is by personal contact. The Swarajist group, though it has developed its organization better than any other, hardly reaches the villager, nor, until it sets before itself the prize of office, is it likely to acquire the means or ambition of doing so. The first requisite therefore, if any permanent contact is ever to be obtained between voter and Member, is the introduction of real political responsibility. The candidate at present best utilizes his scanty resources and sufficiently serves his ends if he concentrates his energies on a short electoral campaign before polling takes place. Often his activities are confined to the period between nomination and election. Once elected, he has no inducement, even if he had the means, to nurse his constituency for the next contest or to explain the course of events and the view he takes in regard to it. If he has put forward any political programme at the elections, he may ignore it in the confidence that he will not be called to account. Not for three years need he remember his dependence on popular favour ; and meanwhile the political education of his constituents has stood exactly where it was before.

(4) *The Indian Franchise Committee on the interest evinced by the Electorate in the Elections, 1 May 1932*[1]

59. While it is certainly true that the great majority of villagers in India today have a very rudimentary idea of what the elections are about, and vote largely on personal grounds, the interest now taken in politics and in elections is far more widespread than is always realized outside India. Perhaps the best single test is the figures of the number of voters who actually go to the poll. The following table (taken from the *Report of the Indian Statutory Commission*, vol. I, p. 197) gives the figures for the elections of 1920, 1923 and 1926 :

Province	Percentage of population enfranchised (1926)	Percentage of votes polled in the elections of		
		1920	1923	1926
Madras	3·2	24·9	36·3 (11·4)	48·6 (19·2)
Bombay	3·9	16·2	38·4 (15·3)	39·0 (19·3)
Bengal	2·5	33·4	39·0	39·2 (13·0)
United Provinces ..	3·5	33·0	42·2 (2·8)	50·2 (10·0)
Punjab	3·4	32·0	49·3	52·4 (6·8)
Bihar and Orissa ..	1·1	41·0	52·0	61·0
Central Provinces ..	1·3	22·5	57·7	61·9
Assam	3·7	16·4	37·5	35·0 (not known)
	2·8	29·0	39·9	42·6

NOTE : The figures in brackets give the percentage of women who voted to female electors, and it is clear that the enfranchisement of women has slightly retarded the general rate of improvement. The figures generally show a connexion between a small electorate and a high proportion of voters.

The percentages for Madras, Punjab, Bihar and Orissa and Assam relate to contested elections only. For other Provinces the percentage of voters on the roll in all constituencies who polled their votes is shown. In all cases the figures cover special as well as general constituencies.

The figures for 1929-30 were as follows (as in 1920 they are affected by the fact that the Indian National Congress called upon its followers to abstain from the polls) :

Province	Percentage of population enfranchised, 1929-30	Percentage of votes polled in the elections of 1929-30
Madras	3·2	43·1 (18·1)
Bombay	3·9	11·4 (6·5)
Bengal	2·5	26·1 —
United Provinces	3·5	23·7 (3·9)
Punjab	3·1	38·5 (5·6)
Bihar and Orissa	1·1	33·2 (5·4)
Central Provinces	1·3	33·3 (8·8)
Assam	3·7	28·3 (6·5)

[1] *Report of the Indian Franchise Committee* (1932), pp. 29-30.

Moreover, elections for local, district and municipal boards are now the rule in all the Provinces of India, and the number of the votes cast at them is very large.

60. There is no question that India is now familiar with voting and elections. What might in 1919 have been regarded as an imported and unfamiliar institution is now an accepted commonplace of Indian political life. In the words of the Statutory Commission's *Report* (vol. I, p. 197), 'It is clear that electoral contests do really attract the interest of the general body of voters.' We are able to testify to the accuracy of this view in the North-West Frontier Province, where during our visit, elections were being held for the provincial Council for the first time, where 49·8 per cent of the electors polled in contested elections, and where the activity of candidates and the interest of voters were obvious to the eye.

XXI. Working of the Reforms in the Provinces: A general Appraisal

(1) *Memorandum submitted by the Government of Bombay to the Indian Statutory Commission, 1930*[1]

255. Although the system introduced by the Reforms may be said to have worked smoothly and satisfactorily in this Presidency, it would not be quite correct to say that it has worked in the way in which it was intended to do. The absence of any strong and well-organized ministerial parties and of joint responsibility among the Ministers has led to there being in actual practice no great difference between the Members of the Executive Council and the Ministers. There have not been at any time, nor are there at present, any strong well-organized parties in the Council with any definite policy from whom the Ministers could be selected and on whose support they could count. The Swarajist Party has been the only organized party united by bonds other than communal. It has never commanded a majority in the Council and has been pledged to a policy of refusal of political responsibility. The Ministers have had, in consequence, to be selected from the smaller groups. These groups have been not only numerically inferior but deficient in organization. In the second Council the non-Brahmin party had made some progress in these two respects. It acknowledged a certain allegiance to the non-Brahmin Minister for Education and followed his leadership in matters which concerned that particular department; but it appeared to consider itself entirely free and was not infrequently divided on other matters, whether affecting Reserved or Transferred Departments. The two Muhammadan groups—one for Sind and the other for the Presidency—have up to now not made much progress in real organization. Upon questions which especially interest and concern their electorates they generally vote together. But outside the bonds of communal interest they have little cohesion. Their lack of organization and settled policy is the second cause of the weakness of the position of the Ministers. Still another cause is the fact that the smaller groups in the House from which the Ministers were appointed are separated by locality and religion.

[1] Memorandum submitted by the Government of Bombay.—*Indian Statutory Commission*, vol. VII, pp. 267-9.

The two Muhammadan groups are geographically disconnected and distinct and the third group is composed of Hindus partly from the Deccan and partly from the Southern Maratha Country. The difficulty has been enhanced by the financial stringency which has prevailed all through the period of the Reforms and which had made it impossible without increased taxation to allocate sufficient funds to the Transferred Departments to enable the Ministers to present a party programme which would secure the systematic and united support of the smaller groups which they represent. Without adequate support from their followers the Ministers have always been obliged to rely largely for support upon the official vote and this had had the effect of obscuring the distinction between them and the Members of the Executive Council. The majority of the non-official members whose political education has been mainly in the school of opposition to official measures recognize little distinction between the Ministers who are supposed to represent the popular element and the Members of the Executive Government. Both depend for support mainly on the official vote and the followers of the Ministers regard them mainly as Members of the Executive Government. This has tended to deaden the followers' sense of allegiance, to lessen their sense of responsibility and to throw them back on the simpler and more popular policy of opposition to official measures. A party which held the existence of a ministry in its power would systematically use and support the ministry. The Ministers are scarcely felt to belong to a party upon whose support they do not wholly depend for their political existence, and which regards them not so much as its own representatives as bound by the official vote to the policy of the Executive Government.

The absence of well organized parties divided on broad questions of policy is inevitable under the present system. Dyarchy, with the dual control over Ministers (of the Legislative Council and of the Governor) which it necessarily involves, hinders the growth of such parties. It is also probable that if the Ministers were to organize parties of their own and to rely entirely on them for support, and be guided by their wishes on all important matters, they would have constantly to oppose the reserved half of Government with the result that the latter would be repeatedly defeated in the Council and deadlocks would be of constant occurrence.

The Government has always been in the anomalous position of an executive pledged to carry on the business of governing without a working majority in the House. It has been enabled to carry on its business in spite of a persistent and at times well-organized Opposition, mainly because the majority in the House has been determined that the Opposition shall not bring Government to a deadlock. The Government cannot, however, reckon on the support of a majority even in matters concerning Transferred Departments, because the Ministers have not an assured following in the House.

A further cause of the weakness of Dyarchy in this Presidency has been the absence of joint responsibility among the Ministers. The necessity of selecting the Ministers from the smaller and more or less disorganized groups in the Council has made the existence of joint responsibility among them practically impossible. Efforts were at one time made to introduce joint responsibility, but they did not materialize.

Though Dyarchy has worked with good results in this Presidency, the essential conditions for its successful working have been wanting; and in so far as it has worked, the success achieved was partly due to the moderation of the Council and partly to the efforts made to work the Reforms successfully by the Members of the Government and the permanent Services. The Members of the Services generally and the heads of the departments have loyally co-operated with the Members of Council and Ministers in working the Reforms and the relations between them have always been good.

(2) *Report of the Reforms Enquiry Committee, 3 December 1924*

39. We have now completed our examination of the evidence produced before us to the effect that Dyarchy has failed. It is clear that witnesses have frequently made this allegation with reference not to Dyarchy itself and have been thinking not of the division of functions, which is the essential principle of Dyarchy, but of other features of the Constitution. Complete Dyarchy was not in fact established. For complete Dyarchy it would have been necessary to have established a complete vertical division of functions between the two halves of a Provincial Government, and to have endowed each half with a separate purse, with a separate permanent staff and with a separate Legislature; in the same way as in a federal Constitution, there is a corresponding horizontal division in these respects. We have of course no evidence to show how such a system might have worked in India. The partial Dyarchy which was introduced is clearly, as stated by the Government of the United Provinces, a complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient. A complex constitution like Dyarchy, requires more particularly to be worked by reasonable men in a reasonable spirit, if deadlocks are not to ensue. In this, however, it is by no means unusual, for many democratic Constitutions contain, in the words of Lord Bryce, 'a body of complicated devices, full of opportunities for conflict and for deadlock'. The existing Constitution is working in most Provinces, and it is giving a training in parliamentary government to the electorate and also to the Members of the Legislatures and to Indian Ministers. While the period during which the present Constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed the evidence before us is far from convincing us that it has failed. If, recently, in some of the Provinces, it has not achieved the expected measure of success, it is because it was not worked on the lines and in the spirit which was intended. We hold in fact that, except by some form of dualism, it was not possible to afford an equally valuable training towards responsible government in India and still to safeguard those conditions upon which government depends.

(3) *Report of the Indian Statutory Commission on the Difficulties of working Dyarchy, 12 May 1930*[1]

44. Nothing is more striking, when one compares the statutory provisions for the Provinces of India with, for example, the statutory

[1] Vol. II, pars 44-6.

provisions for the Provinces of Canada, than the extent to which in the former case the Act of Parliament and the rules made under it elaborate a detailed scheme, precise in almost every particular, while the British North America Act of 1867 left so much to be implied and to grow. Analogies are particularly dangerous in the case of India, where so many of the governing considerations are unique. We are far from suggesting that the conditions are parallel ; but the contrast brings out the point we wish to make.

45. The explanation of this rigidity is, in part, the traditional nature of Indian government. Rules and regulations meet the administrator at every turn. But it is emphasized by the fixed distribution of provincial subjects between Ministers and Members of the Governor's Executive Council, which is the essence of Dyarchy. Certain portfolios must be in the hands of Councillors ; certain other portfolios must be in the hands of Ministers, at any rate so long as Ministers can be found to hold them. It was thus hoped to give Ministers experience of departmental administration, and to develop, both in them and in the Legislatures to which they are responsible as far as these Transferred subjects are concerned, experience of constitutional responsibility. There has been much useful work done under this system, and the criticisms we have felt bound to make where it has failed to produce good results are not at all intended to deny the degree of success which it has sometimes attained. Dyarchy as a training ground has this to its credit that it has brought home to some who had no previous experience of the task of government the difficulties of administration and the meaning of responsibility. But it seems to us clear that a system which was designed to develop a sense of responsibility has sometimes tended to encourage a wholly different attitude. As long as Dyarchy continues, it is inevitable that the elected Members of the Legislature should tend to show an exaggerated hostility to the work of the Reserved half of the Government, which they may criticize but cannot control. If money is wanted for 'nation-building' services, the temptation to blame Reserved Departments for spending too much is far more attractive than the alternative course of imposing new taxes. And if new taxes were imposed, where is the guarantee that the proceeds would be devoted to the purpose intended ? A Legislature with Ministers responsible to it for certain departments of government naturally looks across the boundary to the forbidden territory reserved for a different system of administration, and loses much of the value of its control over ministerial policy by indulging in bouts of criticism of departments which are not in the hands of Ministers. These Reserved Departments are exceedingly important, including in their scope police, the magistracy, jails, irrigation and land revenue. But it seems to us that the consequences and tendencies which we have been describing proceed not so much from the fact that in a given case this or that department is administered by an official, as from the fact that a hard-and-fast line is drawn between topics which may be, and topics which cannot be, entrusted to Ministers. There is, in fact, a real appreciation on the part both of Ministers and of the Legislatures of the help which experienced officials bring to the work of government, though the debt is not always openly avowed by the Legislatures. Relations between Executive Councillors and Ministers

are, we believe, intimate and friendly. But rigid Dyarchy is a standing challenge which either ranges Ministers against the Reserved half of Government or exposes them to the charge of being the subservient tools of the bureaucracy. And all the time the growth of real responsibility (which was the object of the adoption of the system) is being hindered.

46. We propose, therefore, that the rigid division into Reserved and Transferred subjects should disappear.

(4) *Report of the Indian Statutory Commission on the Working of the Provincial Legislatures*[1]

242. Everywhere the conduct of the business of the Legislatures has been carried on with keenness, there has been much good debating, and the Government has been exposed to considerable challenge and comment from its opponents among the elected Members. It would be impossible to say that opposition to Government has always shown itself to be restrained or reasonable, but we are convinced that much of this irresponsible spirit is due to those effects of Dyarchy which we have described and analysed . . . . above. Moreover, Members of Legislative Councils have been engaged in working a copy of parliamentary institutions under conditions which often tend to reproduce the form rather than the substance of the original. It is much to the credit of many of India's public men that they should so rapidly have adapted themselves to these new methods, and we are strongly of opinion that the prominence which is given in the Press to proceedings in the Central Legislature have tended to obscure to British eyes the very general measure of success which has been attained by most of the provincial Councils and their real importance. If the Councils have sometimes shown themselves indifferent to the practical needs of administrative efficiency, they have also in many instances exerted a useful influence, and thrown an informing light upon the proceedings of Government. The average voter, and still more the average citizen, does not, we believe, as yet pay close attention to the activities of his representative. But interest is growing. In two Provinces the Governor has often found it necessary to make extensive use of his exceptional powers ; but apart from this the reformed provincial Councils have actually worked, and they have worked better certainly than many anticipated at their inception, though not entirely in the manner in which the authors of Dyarchy intended.

(5) *Joint Memorandum by the British Indian Delegation, 17 November 1933*[2]

8. We must now deal with the charge that there has been a sensible deterioration in the services transferred to responsible Ministers under the Montagu-Chelmsford scheme. This assertion has been made by Mr Churchill before the Committee and forms the basis of a great deal of the press propaganda in this country. When Mr Churchill was asked by Sir John Wardlaw-Milne to justify the statement, Mr Churchill refused

[1] Vol. I, par. 242.
[2] *Report of Joint Committee on Indian Constitutional Reform* (Session 1932-3), appendix A, vol. III, pp. 230-5.

to develop the subject further since ' it would be painful to his Indian friends '.

Though Mr Churchill declined to give the source of his information or the facts on which he based his conclusions, he explained that the deterioration he referred to was not in respect of personnel but in respect of the services rendered to the people. The only specific instances of deterioration that have been cited by the opponents of reforms in India are cases of embezzlement of money in municipalities, corruption in some of the Services, the suppression of two major municipal boards in Northern India, and the growth in the arrears of municipal taxes in different Provinces. The principal Services transferred to ministerial control in the Provinces under the Montagu-Chelmsford reforms are :

(*a*) Communications
(*b*) Education
(*c*) Medical Relief and Sanitation
(*d*) Agriculture and Industries
(*e*) Local Self-Government.

9. *Communications.* As regards communications, it is universally acknowledged that there has been a tremendous improvement in the condition of the roads. We do not claim that the improvement is solely or even mainly due to ministerial direction. The greater interest shown in rural communications as a result of the pressure exerted by rural representatives in the provincial Councils, the requirements of the rapidly developing motor traffic, the constitution of an All-India Road Board, financed by means of a tax on petrol, and other factors have all contributed to the very striking development in regard to transport facilities in India. Indeed, as Sir Charles Innes has pointed out in his evidence, the emergence of the motor-bus which now reaches remote villages has been one of the important factors that have contributed to the growth of political consciousness in rural areas and to the magnitude of the mass movements that have been a feature of the political agitation during the last decade in India.

10. *Education.* In the following statements (below and p. 149) the number of educational institutions and the number of students attending them in 1921-2 and 1929-30 are given for comparative purposes.

	Number of Institutions		Percentage Increase
	1921-2	1929-30	
(1) University colleges ..	231	313	35·50
(2) Secondary schools ..	8,987	13,152	46·34
(3) Primary schools	160,072	204,094	27·50

The statement shows a very striking development in all classes of educational institutions. Particular attention may be drawn to the large number of students at the Universities. The figure for 1929-30 was nearly 100,000, and it has enormously increased since then. This figure is of particular interest with reference to Mr Churchill's statement that ' the proportion of the intelligentsia in India is probably smaller in proportion to the amount of the population than in any other community in

	Number of Students		Percentage Increase
	1921-2	1929-30	
(1) Universities			
(*a*) Boys	58,066	94,025	61·93
(*b*) Girls	1,529	3,141	105·43
(2) Secondary schools			
(*a*) Boys	1,110,360	2,009,181	80·95
(*b*) Girls	129,164	237,027	83·51
(3) Primary schools			
(*a*) Boys	5,111,901	7,332,678	43·44
(*b*) Girls	1,198,550	1,891,406	57·81

the world—far smaller than the proportion in Western countries'. Though the proportion of literates in India is comparatively very small, the number of those who have received higher education is astonishingly large. We have not been able to get accurate statistics as regards university education in the principal countries of Europe, but we believe we are correct in stating that the number of students at the Universities in British India is not only absolutely but relatively to the population greater than in some countries in the West.

11. *Medical Relief and Sanitation.* The developments in these departments, as the figures given below show, have been almost as striking as in the case of education. The organization of an efficient and fairly widespread agency for the prevention of epidemics has been a feature of the sanitary administration of many Provinces.

MEDICAL AND PUBLIC HEALTH

Expenditure (in crores of rupees)

	1921-2	1929-30	Percentage Increase
(1) *Provincial*			
(*a*) Medical	2·85	4·06	42·45
(*b*) Public Health	1·41	2·62	85·81
(2) *Municipalities*			
(*a*) Medical	0·67	0·93	38·81
(*b*) Water supply, drainage and conservancy ..	4·28	5·84	36·44
(3) *Local Boards* Hospitals and sanitation ..	1·09	2·02	85·32

NUMBER OF HOSPITALS AND PATIENTS TREATED

	1920	1929	Percentage Increase
I. Hospitals			
(1) State	407	546	34·15
(2) Local authorities ..	2,655	3,807	43·39
II. Number of patients treated	36,342,417	54,132,152	48·95

12. *Agriculture and Industries.* It is difficult by means of statistics to indicate the improvements that have been introduced in agricultural methods by governmental action. For a detailed description of the activities of the provincial Departments of Agriculture and of the Central Board of Agricultural Research, which was established as a result of the recommendations of the Linlithgow Commission, we must refer the members of the Committee to the official reports that are published annually. We may, however, give here one instance of the results achieved by the application of scientific research to agriculture. The imports of sugar into India until very recently were so heavy that the customs duties levied on sugar yielded Rs 10·7 crores in 1930-1, i.e. nearly 23 per cent of the total customs revenue and over 10 per cent of the total net revenue of the country. Owing to the introduction of improved types of sugar cane and the levy of protective duties, the production of sugar is growing so rapidly that it is estimated now that India will be completely self-supporting as regards sugar within the next three or four years.

The astonishing development of industries in India is generally admitted and in fact has caused some alarm in foreign countries. It is, therefore, unnecessary for us to give any figures, nor do we claim that this development is due to ministerial action in the Provinces. As we shall have occasion to state in a subsequent section of this memorandum, it is only the Central Government that can create the conditions necessary for the development of industries.

13. *Local Self-Government.* The principal services entrusted to local authorities in India are rural communication, elementary education, medical relief and sanitation. The statistics we have given above relate both to provincial and local institutions. Judging by these, it is obvious that on the whole there has been a marked development. Emphasis has, however, been laid not so much on the development of the services entrusted to the care of these authorities, but rather on the alleged irregularities and cases of maladministration in some of the Provinces. We do not, of course, deny that there have been several failures, but such failures are, as the Simon Commission have pointed out, in no way peculiar to India, and ' they can be paralleled at various times in countries with a far greater experience of representative institutions '. Nor have they been confined in India to the Transferred Departments. There has not been in the history of Indian administration during recent years such a colossal failure as the Bombay Back Bay Reclamation Scheme, in which Lord Lloyd, who was then Governor, took a personal interest and which has imposed a very heavy burden on the finances of Bombay for many years. We would draw the attention of the critics, who have sought to draw inferences regarding the competency of Indian Ministers from a few failures in local self-government, to the report of the Back Bay Enquiry Committee,[1] and also to the reports of the Central Public Accounts Committee, which have brought to light serious irregularities even in the administration of Departments not entrusted to responsible Ministers.

14. In the administration of local authorities since the Reforms,

[1] This Committee was appointed in 1926 by the Government of India to inquire into the Back Bay Reclamation Scheme. It was presided over by Sir Grimwood Mears, Chief Justice of the Allahabad High Court.

Indian Ministers have laboured under serious difficulties which can be traced directly to the attempts to carry out in its fullest implications the recommendation of the Montagu-Chelmsford Report that 'there should be the largest possible independence for local authorities of outside control'. Before the Montagu-Chelmsford Reforms, there was in India nothing that could be recognized as Local Self-Government of the British type. The principal administrative change that was made as a result of this recommendation in the Montagu-Chelmsford Report and its consequences have been fully described in the following passage from the Simon Commission Report :[1]

> 'The principal administrative change made, in every Province except the Punjab, was the substitution of an elected Chairman in almost every district and municipality. This measure, designed to carry out the policy of enlarging the sphere of self-government by removing official control, in fact did far more than this : it radically altered the constitution of the local bodies and their relationship with the Provincial Government. The official Chairman had not merely been the presiding member, but actually the chief executive officer of the local board. In administering its affairs, he had never been entirely dependent on the board's own staff. He combined in his person the authority of the highest revenue and the highest magisterial office in the district, and had in consequence at his command an army of other officials whose services he could and often did utilize in the discharge of his local board duties. His functions as Chairman of the district board merely formed part of a varied complex, the constituent part of which fitted in with, and simplified the discharge of each other. His revenue and magisterial work took him to every corner of his charge, and these tours served at the same time to keep him in intimate touch—without any extra expenditure of time, money or effort—with the requirements of local board administration.
>
> 'It seems to have been expected that an elected Chairman should not only take the place of the District Officer as presiding member, but should also, without pay and in such time as he could spare from his own affairs, be the chief Executive Officer of the board, with such assistance as he might obtain from an ill-paid secretary, little better than a minute clerk, and from the technical officers such as the engineer and medical officer.'

It is not, therefore, surprising that there has been some loss of efficiency in some of the Provinces. The principal defects of the system introduced on the recommendation of the Montagu-Chelmsford Report are, as has been pointed out by the Simon Commission :

(*a*) the absence of 'a class of skilled professional administrators who, while they follow the policy laid down by the elected representatives, are at once their advisers and the instruments whereby their decisions are put into operation'; and

(*b*) the absence of a general system of grants-in-aid which in this country have been found to be more effective instruments of control than the exercise of statutory powers by the Central authority.

[1] *Indian Statutory Commission Report*, vol. I, par. 350.

Political and financial difficulties have stood in the way of reform in Local Self-Government. The development of a system of grants-in-aid has been rendered impossible owing to the extreme financial stringency in the Provinces, for a grant-in-aid is ineffective as a means of controlling local authorities unless it is substantial. The difficulties as regards the provision of efficient executive officers for the local authorities have been partly political and partly financial. The Collector of the district, who co-ordinates the work of all departments, is obviously the most appropriate executive officer for the district board, but so long as the Indian Civil Service is not completely controlled by responsible Ministers, political considerations will stand in the way of this important administrative development. The resources of the local authorities are quite inadequate for the employment of an executive agency as efficient as that which was under the control of the Collector of the district before the reforms. It may be noted in this connexion that, as has been observed by the Simon Commission, wherever (as in Madras) a system of grants-in-aid subject to inspection has been adopted, there has been very little loss of efficiency.

15. The difficulties of dealing with local authorities who have been given extensive powers, which in some respects are wider than those possessed by similar bodies in this country or on the Continent of Europe, will be appreciated by British politicians who are acquainted with the history of Local Self-Government in this country in the first half of the nineteenth century. It is unnecessary for us to remind the members of the Committee of the formidable difficulties which Sir Robert Peel and other British statesmen had to encounter in the last century in reforming the police administration and other local services. Indian local authorities are very jealous of any interference with their newly-acquired privileges, and publicity is the only weapon on which the Central authority can rely. The system of surcharge has during recent years been introduced in several Provinces, and the stricter audit which is now in force discloses irregularities which in the pre-reform days never became public.

The annual reviews of the administration of municipalities and local boards which are issued, it may be noted, under the instruction of the responsible Indian Ministers, have also during recent years been of a very critical nature, for it is obvious that public opinion has to be created to some extent before powerful and influential municipalities, such as Benares, can be superseded by an exercise of the statutory powers. It is the extracts from these reviews that have furnished the critics of the White Paper scheme with the material for their press propaganda. The following letter from Sir Alfred Watson, which appeared in *The Times* of 3rd June 1933, summarizes in a few sentences the true state of affairs :

> 'Much is being made by those who oppose advance in India of extracts from the reports of the Provincial Governments on Local Self-Government in India. These are held to be the condemnation of Indian control of Indian affairs. The point seems to be ignored that Local Self-Government is one of the Transferred subjects in the hands of Indian Ministers, and that all these censures are those of Indians upon the administration of their own people ; that does not support the contention that Indians are indifferent to inefficiency or corruption in Government.

'The level of municipal government in India is low, and has never been anything else, but it is certainly improving under the watchful criticism of the Indians in whose hands its central control has been placed.'

Section E : Relations between the Centre and the Provinces

I. Allocation of Subjects between the Centre and the Provinces : Devolution Rules[1]

3. (1) For the purpose of distinguishing the functions of the Local Governments and local Legislatures of Governors' Provinces[2] . . . from the functions of the Governor-General in Council and the Indian Legislature, subjects shall in those Provinces be classified in relation to the functions of government as Central and Provincial subjects in accordance with the lists set out in Schedule I.

(2) Any matter which is included in the list of Provincial subjects set out in Part II of Schedule I shall, to the extent of such inclusion, be excluded from any Central subject of which, but for such inclusion, it would form part.

4. Where any doubt arises as to whether a particular matter does or does not relate to a Provincial subject, the Governor-General in Council shall decide whether the matter does or does not so relate, and his decision shall be final.

* * *

Schedule I

Part I. Central Subjects

1. (*a*) Defence of India, and all matters connected with His Majesty's Naval, Military, and Air Forces in India, or with His Majesty's Indian Marine Service or with any other force raised in India, other than military and armed police wholly maintained by Local Governments.

(*b*) Naval and military works and cantonments.

2. External relations, including naturalization and aliens, and pilgrimages beyond India.

3. Relations with States in India.[3]

4. Political charges.

5. Communications to the extent described under the following heads, namely :

(*a*) railways and extra-municipal tramways, in so far as they are

[1] *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pp. 209-10 and 221-33.

[2] Consequent on the constitution of Burma as a Governor's Province, the words 'and the province of Burma' were omitted by Notification No. 519-V, dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[3] The following words were inserted and added by Notification No. F. 173-IV, dated 18 April 1932, *Gazette of India, Extraordinary* (1932), p. 247 :

'and all matters relating to tribal or other territory outside British India, but included in India'. [Ed.]

not classified as Provincial subjects under entry 6(*d*) of Part II of this Schedule ;

(*b*) aircraft and all matters connected therewith ; and

(*c*) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature.

6. Shipping and navigation, including shipping and navigation or inland waterways in so far as declared to be a Central subject in accordance with entry 5(*c*).

7. Light-houses (including their approaches), beacons, lightships, and buoys.

8. Port quarantine and marine hospitals.

9. Ports[1] declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature.

10. Posts, telegraphs and telephones, including wireless installations.[2]

11. Customs, cotton excise duties, income-tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department and [excluded Audit Departments],[3] as defined in rules framed under section 96-D (1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production, supply, and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature to be essential in the public interest.[4]

20. Development of industries, in cases where such development by central authority is declared[5] by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

[1] For rule declaring the ports of Calcutta, Bombay, Karachi, Aden, Rangoon and Madras to be major ports, see Notification No. 1169, dated 19 February 1921, in *Gazette of India* (1921), pt i, p. 275.

For declaration *re* Vizagapatam, see *Gazette of India* (1925), pt i, p. 392.

[2] The following words were inserted and added by Notification No. F. 46/1/35, dated 5 December 1935, *Gazette of India* (1935), pt i, p. 1368 :

'and broadcasting'. [Ed.]

[3] These words were omitted by Notification No. F. 326/2/26, dated 28 June 1926, *Gazette of India* (1926), pt i, p. 779. [Ed.]

[4] The following words were inserted and added by Notification No. F. 121/25, dated 25 March 1926, *Gazette of India* (1926), pt i, p. 442 :

'save to the extent to which in such rule or legislation such control is directed to be exercised by a local Government'. [Ed.]

[5] For declaration that the development by the Central Authority of the steel rail and railway wagon industries in certain Provinces is expedient in the public interest, see Notification No. 39-T, dated 14 June 1924, *Gazette of India* (1924), pt i, p. 485.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal law, including criminal procedure.

31. Central police organization.

32. Control of arms and ammunition.

33. Central agencies and institutions for research (including observatories), and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archaeology.

37. Zoological Survey.

38. Meteorology.

39. Census and statistics.

40. All-India services.

41. Legislation in regard to any Provincial subjects, in so far as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian Legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than intra-provincial, and declaration of laws in connexion therewith.

43. Regulation of ceremonial, titles, orders, precedence, and civil uniform.

44. Immovable property [acquired by, and maintained at the cost of,][1] the Governor-General in Council.

45. The Public Service Commission.

46. All matters expressly excepted by the provisions of Part II of this Schedule, from inclusion among Provincial subjects.

47. All other matters not included among Provincial subjects under Part II of this Schedule.

Part II. Provincial Subjects

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a Province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian Legislature as regards

[1] For these words, the words 'in the possession of' were substituted by Notification No. F. 121/7/25, dated 6 January 1926, *Gazette of India* (1926), pt i, p. 15.

(*a*) the powers of such authorities to borrow otherwise than from a Provincial Government, and

(*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.[1]

3. Public health and sanitation and vital statistics; subject to legislation by the Indian Legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature.

4. Pilgrimages within British India.

5. Education: provided that

(*a*) the following subjects shall be excluded, namely:

(i) the Benares Hindu University, [the Aligarh Muslim University][2] and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be Central subjects, and

(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(*b*) the following subjects shall be subject to legislation by the Indian Legislature, namely:

(i) [the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and]*

(ii) the definition of the jurisdiction of any University outside the Province in which it is situated, [and]*

(iii) [for a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organization of secondary education in the Presidency of Bengal.]*

6. [3][Public works, other than those falling under entry 14 of this Part and included under the following heads, namely:]

(*a*) construction and maintenance of provincial buildings used or intended for any purpose in connexion with the administration of the Province; and care of historical monuments, with the exception of ancient monuments as defined in section 2(1) of the Ancient Monuments Preservation Act,

[1] The following words were inserted and added by Notification No. 173-IV, dated 18 April 1932, *Gazette of India, Extraordinary* (1932), p. 247:

'but excluding medical establishments entertained in the North-West Province in connexion with the Frontier watch and ward'. [Ed.]

[2] These words were inserted by Notification No. 11-S, dated 10 February 1921, see *Gazette of India* (1921), pt i, p. 216.

* Sub-items (i) and (iii) of this item were omitted by Notification No. F. 290/25/27, dated 28 April 1926, *Gazette of India* (1926), pt i, p. 517, and the items renumbered. [Ed.]

[3] These words were substituted for the words 'Public Works included under the following heads, namely:—' by Notification No. F.-975, dated 22 November 1922; see *Gazette of India* (1922), pt i, p. 1364.

1904, which are for the time being declared to be protected monuments under section 3(1) of that Act ; provided that the Governor-General in Council may, by notification[1] in the *Gazette of India* remove any such monument from the operation of this exception [2][either absolutely or subject to such conditions as he may, after consultation with the Local Government or Local Governments concerned, prescribe].

[3][(*b*) Roads, bridges, ferries, tunnels, ropeways, causeways and other means of communication, subject to the provisions of rule 12A of these Rules, and of any orders made thereunder.]

(*c*) tramways within municipal areas ; and

(*d*) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation ; subject to legislation by the Indian Legislature in the case of any such railway or tramway which is in physical connexion with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power ; subject to legislation by the Indian Legislature with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory.

8. Land revenue administration as described under the following heads, namely,

(*a*) assessment and collection of land revenue ;

(*b*) maintenance of land records, survey for revenue purposes, records-of-rights ;

(*c*) laws regarding land tenures, relations of landlords and tenants, collection of rents ;

(*d*) Courts of Wards, incumbered and attached estates ;

(*e*) land improvement and agricultural loans ;

(*f*) colonization and disposal of Crown lands and alienation of land revenue ;[4] and

[1] For removal of the Sidi Basir's minars and tombs at Ahmedabad in the Bombay Presidency from the operation of the exception, see Notification No. 1555, dated 18 October 1923, *Gazette of India* (1923), pt. i, p. 1351.

For removal of certain ancient monuments, see Notification No. 2056, dated 24 December 1923, *Gazette of India* (1923), pt i, p. 1755. Notification No. 1680, dated 26 August 1924, ibid. (1924), pt i, p. 771, and Notification No. 1904, dated 1 October 1924, ibid. (1924), pt i, p. 888.

For removal of certain ancient monuments in Ajmer, see Notification No. 2326, dated 11 December 1924, *Gazette of India* (1924), pt i, p. 1070 ; in Meerut, see *Gazette of India* (1925), pt i, p. 89.

[2] These words were inserted by Notification No. F. 121/2/25, dated 20 April 1925, see *Gazette of India* (1925), pt i, p. 325.

[3] This item was substituted by Notification No. F. 121/3/125, dated 5 October 1925, see *Gazette of India* (1925), pt i, p. 926.

[4] For these words, the following words were substituted by Notification No. F. 121/7/25, dated 6 January 1926, *Gazette of India*, pt i, p. 15 :

'(f) Colonization and disposal (subject to any provisions or restrictions that may be prescribed by the Secretary of State in Council under section 30 of the Act) of Crown lands not in the possession of the Governor-General in Council, and alienation of land revenues ; and'. [Ed.]

(*g*) management of Government estates.[1]

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests, and prevention of plant diseases ; subject to legislation by the Indian Legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian Legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein [2][and all buildings and works executed by the Forest Department] subject to legislation by the Indian Legislature as regards disforestation of reserved forests.

15. Land acquisition ; subject to legislation by the Indian Legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organization of courts of civil and criminal jurisdiction within the Province ; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators General and Official Trustees ; subject to legislation by the Indian Legislature.

20. Non-judicial stamps, subject to legislation by the Indian Legislature, and judicial stamps, subject to legislation by the Indian Legislature, as regards amount of court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents ; subject to legislation by the Indian Legislature.

22. Registration of births, deaths, and marriages ; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government

[1] The following proviso to item (g) was added by Notification No. F. 173-IV, dated 18 April 1932, *Gazette of India, Extraordinary* (1932), p. 247 :

'(g) Provided that no resumption or modification of a jagir or military reward grant shall be made in the North-West Frontier Province save under the orders of the Governor-General in Council.' [Ed.]

[2] These words were inserted by Notification No. F.-975, dated 22 November 1922 : see *Gazette of India* (1922), pt i, p. 1364.

property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.[1]

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely,

(*a*) factories ;
(*b*) settlement of labour disputes ;
(*c*) electricity ;
(*d*) boilers ;
(*e*) gas ;
(*f*) smoke nuisances ; and
(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing ;

subject as to heads (*a*), (*b*), (*c*), (*d*), and (*g*) to legislation by the Indian Legislature.

27. Stores and stationery, subject, in the case of imported stores and stationery, to such rules[2] as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuffs and other articles ; subject to legislation by the Indian Legislature as regards import and export trade.

29. Weights and measures ; subject to legislation by the Indian Legislature as regards standards.

30. Ports, except such ports as may be declared by rules made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be Central subjects, but subject as regards inland steam-vessels to legislation by the Indian Legislature.

32. Police, including railway police ; subject, in the case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely,

(*a*) regulation of betting and gambling ;
(*b*) prevention of cruelty to animals ;
(*c*) protection of wild birds and animals ;
(*d*) control of poisons, subject to legislation by the Indian Legislature ;
(*e*) [3][control of vehicles, subject, in the case of motor vehicles, to legislation by the Indian Legislature as regards licences valid throughout British India ;] and

[1] The following additional subject was inserted by Notification No. F. 121/25, dated 25 March 1926, *Gazette of India* (1926), pt i, p. 442 :

'24-A. Control of production, supply and distribution of any articles to the extent to which by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature such control is directed to be exercised by a local Government.' [Ed.]

[2] See Notification No. S. 420, dated 7 January 1926, *Gazette of India* (1926), pt i, p. 20. [Ed.]

[3] This clause was substituted for the original clause (e) by Notification No. D. 1780-C, dated 8 February 1924 ; see *Gazette of India* (1924), pt i, p. 141.

(*f*) control of dramatic performances and cinematographs, subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses ; subject to legislation by the Indian Legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes ; subject to legislation by the Indian Legislature.

38. European vagrancy ; subject to legislation by the Indian Legislature.

[1][39. Prisons, prisoners (except persons detained under the Bengal State Prisoners Regulation, 1818, the Madras State Prisoners Regulation, 1819, or the Bombay Regulation, XXV of 1827) and reformatories ; subject to legislation by the Indian Legislature.]

40. Pounds and prevention of cattle trespass.

41. Treasure trove.

42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government presses.

44. Elections for Indian and provincial Legislatures ; subject to rules framed under sections 64(1) and 72A(4) of the Act.

45. Regulation of medical and other professional qualifications and standards ; subject to legislation by the Indian Legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by rule 10,[2] of members of all-India and provincial services serving within the Province ; and control, subject to legislation by the Indian Legislature, of public services within the Province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether :

(*a*) taxes included in the Schedules to the Scheduled Taxes Rules ;[3] or

(*b*) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the Province ; subject to the provisions of the Local Government (Borrowing) Rules.

50. Imposition by legislation of punishments by fine, penalty, or imprisonment for enforcing any law of the Province relating to any Provincial subject ; subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

[1] This clause was substituted by Notification No. F.-39/25, dated 8 July 1925 ; see *Gazette of India* (1925), pt i, p. 594.

[2] See p. 102 above. [Ed.]

[3] See pp. 165-6. [Ed.]

51. [1]Any matter which, though falling within a Central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

52. [2] * * *

II. Allocation of Revenues between the Government of India and the Provincial Governments

(1) *Devolution Rules*[3]

14. (1) The following sources of revenue shall, in the case of Governors' Provinces[4] . . . be allocated to the Local Government as sources of provincial revenue, namely :

(*a*) balance standing at the credit of the Province at the time when the Act comes into force ;

[5][(*b*) receipts accruing in respect of Provincial subjects ;]

(*c*) a share (to be determined in the manner provided by rule 15) in the growth of revenue derived from income-tax collected in the Province, so far as that growth is attributable to an increase in the amount of income assessed ;

(*d*) recoveries of loans and advances given by the Local Government and of interest paid on such loans ;

(*e*) payments made to the Local Government by the Governor-General in Council or by other Local Governments, either for services rendered or otherwise ;

(*f*) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;

[1] For notification declaring that matters relating to the survey of minor air routes lying wholly within a single Province and to the provision, maintenance and management of flying services, aerodromes and landing-places for aircraft on such routes are of merely local nature within the Province concerned ; see Notification No. 1702, dated 5 March 1921, *Gazette of India* (1921), pt i, p. 341.

For notification declaring the audit of certain local funds accounts in Assam as of a merely local nature, see Notification No. 536-A, dated 20 July 1921, see *Gazette of India* (1921), pt i, p. 985, and as regards Burma, see *Gazette of India* (1921), pt i, p. 1660.

For certain subjects declared to be of a local nature in all Provinces, see Notification No. 942-A, dated 21 December 1921, *Gazette of India* (1921), pt i, p. 1702.

For declaration that in every Province having a Legislative Council, the preparation of the provincial Code is of merely local nature, see Notification No. 146, dated 21 December 1922, *Gazette of India* (1922), pt i, p. 1523.

For declaration that expenditure incurred in the equipment of civil rallying posts, in connexion with the internal security scheme, should be borne by the Provincial civil budget, see Notification No. 133, dated 26 January 1923, *Gazette of India* (1923), pt i, p. 82.

For declaration that all matters regulated by the Oudh Estates Act, 1869, are of a merely local nature within the United Provinces, see Notification No. D-1524, dated 7 May 1925, *Gazette of India* (1925), pt i, p. 370.

[2] Item 52 was cancelled by Notification No. F.-447/23, dated 19 November 1924, *Gazette of India* (1924), pt i, p. 1021.

[3] *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pp. 211-15.

[4] Consequent on the constitution of Burma as a Governor's Province, the words 'and in the province of Burma' were omitted by Notification No. 519-V, dated 2 January 1923 ; see *Gazette of India, Extraordinary* (1923), p. 43.

[5] This clause was substituted by Notification No. F.-447/23, dated 19 November 1924 ; see *Gazette of India* (1924), pt i, p. 1021.

(*g*) the proceeds of any loans which may be lawfully raised for provincial purposes ; and

(*h*) [1]any other sources which the Governor-General in Council may by order declare to be sources of provincial revenue.

(2) The revenues of Berar shall be allocated to the Local Government of the Central Provinces as a source of provincial revenue. This allocation shall be subject to the following conditions, namely,

(i) that the Local Government of the Central Provinces shall be responsible for the due administration of Berar ; and

(ii) that if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the allocation shall be terminated by order of the Governor-General in Council, or diminished by such amount as the Governor-General in Council may by order in writing direct.

[2][15. (1) Whenever the assessed income of any year subsequent to the year 1920-1 exceeds in any Governor's Province or in the Province of Burma the assessed income of the year 1920-1, there shall be allocated to the Local Government of that Province an amount calculated at the rate of three pies in each rupee of the amount of such excess.

(2) In this rule ' the assessed income ' of any year (other than the year 1920-1) means the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected, whether in that year or thereafter :[3]

Provided that the assessed income of any year subsequent to the year 1920-1 shall not include income in respect of which no share of the tax collected would have been credited to provincial revenues if such income had accrued and been brought under assessment in the year 1920-1.

(3) The assessed income of the year 1920-1 shall be such amount as the Governor-General in Council, after making due allowance for arrears caused by any abnormal delays in the collection of the tax, may determine as the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected. It shall not include income in respect of which no share of the tax collected was credited to provincial revenues.]

[4][Provided that where in any year subsequent to the year 1920-1 the income derived from any business is for any reason assessed to income-

[1] Fees charged in respect of the grant or renewal of licences under the Indian Arms Rules, 1920, are a source of provincial revenue, see Notification No. 546-A, dated 21 July 1921, *Gazette of India* (1921), pt i, p. 985. Any deposit other than personal deposit which has been made with Government before 1 April 1923, and which lapses or has lapsed to Government after 31 March 1921, is a source of provincial revenue ; see *Gazette of India* (1922), pt i, p. 1192.

[2] This rule was substituted by Notification No. 318-F, dated 13 October 1921 ; see *Gazette of India* (1921), pt i, p. 1406. This rule is omitted in the case of N.W.F.P.

[3] The following was inserted by Notification No. I-46-2/31, dated 12 November 1931, *Gazette of India* (1931), pt i, p. 1046 :

' but excluding income brought under assessment in that year consisting of the total income of assesses which in that year 1920-1 would not have been chargeable with income-tax by reason of their being less than Rs 2,000.' [Ed.]

[4] This proviso was added by Notification No. F.-318-11, dated 15 November 1922 ; see *Gazette of India* (1922), pt i, p. 1341.

tax in a Province other than that in which it was assessed in that year, the assessed income of the year 1920-1 of such first-mentioned Province shall be increased, and that of the other Province shall be decreased, by the amount of the income of the business brought under assessment in that year on which income-tax was collected.][1]

16. All moneys derived from sources of provincial revenue shall be paid into the public account of which the Governor-General in Council is custodian and credited to the Government of the Province. The Governor-General in Council shall have power, with the previous sanction of the Secretary of State in Council, to prescribe by general or special order the procedure to be followed in the payment of moneys into, and in the withdrawal, transfer and disbursement of moneys from, the public account, and for the custody of moneys standing in the account.

[2][Such orders may, to such extent and for such purposes as may be stipulated, delegate power to prescribe procedure for the said purposes to the Auditor-General, the Controller of the Currency and to Local Governments.]

17. In the financial year 1921-2 contributions shall be paid to the Governor-General in Council by the Local Governments mentioned below according to the following scale :

Name of Province	Contributions (in lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar ..	22
Assam	15

[3][18. (1)] From the financial year 1922-3 onwards a total contribution of 983 lakhs, or such smaller sum as may be determined by the Governor-General in Council, shall be paid to the Governor-General in Council by the Local Governments mentioned in the preceding rule. When for any year the Governor-General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those Local Governments only whose last previous annual contribution exceeds the proportion specified below of the smaller sum so determined as the

[1] The following was inserted by Notification No. F. 46/4/30, dated 11 October 1930, *Gazette of India* (1930), pt i, p. 1067 :

'Provided further that, where in any year subsequent to the year 1920-1, the administration of a railway is transferred from a railway company to the Government the assessed income of the year 1920-1 of the Province in which the railway company was assessed to income-tax in that year shall be decreased by the amount of the income of the railway company brought under assessment in that year on which income-tax was collected.' [Ed.]

[2] These words were added by Notification No. 1-A, dated 3 January 1922 ; see *Gazette of India* (1922), pt i, p. 4.

[3] Rule '18' was renumbered '18(1)' by Notification No. D-3180, dated 16 November 1921 ; see *Gazette of India* (1921), pt i, p. 1542.

total contribution ; and any reduction so made shall be proportionate to such excess :

Madras	17-90ths
Bombay	13-90ths
Bengal	19-90ths
United Provinces	18-90ths
Punjab	9-90ths
Burma	$6\frac{1}{2}$-90ths
Central Provinces and Berar	5-90ths
Assam	$2\frac{1}{2}$-90ths

[1][(2) Notwithstanding anything contained in sub-rule (1) the contribution payable thereunder by the Local Government of Bengal in the financial years 1925-6, 1926-7 and 1927-8, and out of the contributions payable thereunder by the Local Governments of Bombay,

[1] This sub-rule was added by Notification No. F. 121/5/25, dated 14 July 1925 ; see *Gazette of India* (1925), pt i, p. 613.

This sub-rule was further substituted by the following by Notification No. F. 120/2/27, dated 26 July 1927, *Gazette of India* (1927), pt i, p. 806 :

' (2) Notwithstanding anything contained in sub-rule (1) the contribution payable thereunder by the Local Government of Bengal and 28 lakhs out of the contribution payable by the Local Government of Bombay in the financial year 1926-7 and the contributions payable in the financial year 1927-8 as specified in the annexed table shall be remitted by Governor-General in Council :

TABLE

Contribution			Province by Local Government of which contribution is payable
Rs			
48,73,000	..	..	Madras
37,27,000	..	..	Bombay
54,47,000	..	..	Bengal
51,60,000	..	..	The United Provinces of Agra and Oudh
	..	..	
25,80,000	..	..	Punjab
18,63,000	..	..	Burma
14,33,000	..	..	Central Provinces and Berar
7,17,000	..	..	Assam
258,00,000			

Provided that for the purposes of sub-rule (1)

(*a*) the sum determined by the Governor-General in Council as the total amount of the contributions of the Local Governments shall, for the financial year 1926-7, include any amount remitted from the contribution payable by any Local Government, and for the financial year 1927-8, be deemed to be the total amount of the contributions payable in that year which have been remitted under this sub-rule ;

(*b*) for the financial year 1927-8 the last previous annual contribution of the Local Government of Bengal shall be deemed to be the remitted contribution for the financial year 1926-7 and the last previous contribution of the Local Government of Bombay shall be deemed to include the amount remitted out of the contribution for the said financial year ; and

(*c*) for the financial year 1928-9 the last previous annual contributions of the Local Governments of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, the Central Provinces and Berar and Assam shall be deemed to be the remitted contributions for the financial year 1927-8.' [Ed.]

Burma, the Central Provinces and Berar and Assam, in the financial year 1925-6 the sums of 22 lakhs, 13 lakhs, 9 lakhs and 6 lakhs respectively, shall be remitted by the Governor-General in Council :

Provided that for the purposes of sub-rule (1)

(*a*) the sum determined by the Governor-General in Council as the total amount of the contributions of the Local Governments for the financial year 1925-6 shall include the amount of the contribution of the Local Government of Bengal remitted for that year and the amounts remitted for that year from the contributions of the Local Governments of Bombay, Burma, the Central Provinces and Berar and Assam ;

(*b*) the sum determined by the Governor-General in Council as the total amount of the contributions of the Local Governments for the financial year 1926-7 and 1927-8 shall include the amount of the contribution of the Local Government of Bengal remitted for those years ;

(*c*) for the financial year 1926-7 the last previous annual contributions of the Local Governments of Bombay, Burma, the Central Provinces and Berar and Assam shall be deemed to include in each case the amount remitted out of the contribution of each of the said Local Governments for the financial year 1925-6 ; and

(*d*) for the financial year 1928-9 the last previous annual contribution of the Local Government of Bengal shall be deemed to be the remitted contribution for the financial year 1927-8.]

19. In cases of emergency, the Local Government of any Province may be required by the Governor-General in Council, with the sanction of, and subject to the conditions approved by, the Secretary of State, to pay to the Governor-General in Council a contribution for any financial year in excess of the amount required by the preceding rules in the case of that year.

20. The contributions[1] . . . fixed under the preceding rules shall be a first charge on the allocated revenues and moneys of the Local Governments concerned and shall be paid in such instalments, in such manner, and on such dates, as the Governor-General in Council may prescribe.

(2) *The Scheduled Taxes Rules*[2]

2. The Legislative Council of a Province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of the Local Government, any tax included in Schedule I to these rules.

3. The Legislative Council of a Province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II to these rules.

[1] The words ' and assignments ' were omitted by Notification No. 318-F, dated 13 October 1921 ; see *Gazette of India* (1921), pt i, p. 1406.

[2] Rules under Section 80A(3)(a) of the Government of India Act. *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pt i, pp. 237-9.

4. The Governor-General in Council may at any time, by order, make any addition to the taxes enumerated in Schedules I and II to these rules.

5. Nothing in these rules shall affect the right of a local authority to impose a tax without previous sanction or with the previous sanction of the Local Government when such right is conferred upon it by any law for the time being in force.

SCHEDULE I

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp-duty other than duties of which the amount is fixed by Indian legislation.

SCHEDULE II

(*In this Schedule the word 'tax' includes a cess, rate, duty or fee.*)

1. A toll.
2. A tax on land or land values.
3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.

[1](8. A terminal tax on goods imported into, or exported from, a local area, save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July 1917.)

9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered, such as
    (*a*) a water rate,
    (*b*) a lighting rate,
    (*c*) a scavenging, sanitary or sewage rate,
    (*d*) a drainage tax,
    (*e*) fees for the use of markets and other public conveniences.

III. CONTROL OVER LEGISLATION

(1) *Powers of the Provincial Legislatures : Section 80A of the Government of India Act, 1919*[2]

80A. (1) The local Legislature of any Province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that Province.

[1] This entry was substituted for the original entry 8 by Notification No. 7, dated 24 January 1924 ; see *Gazette of India* (1924), pt i, p. 89.

[2] See pp. 169-70 below, regarding the proposed modifications to this Section by the Reforms Enquiry Committee, 1924. [Ed.]

(2) The local Legislature of any Province may, subject to the provisions of the sub-section next following, repeal or alter as to that Province any law made either before or after the commencement of this Act by any authority in British India other than that local Legislature.

(3) The local Legislature of any Province may not, without the previous sanction of the Governor-General, make or take into consideration any law

(*a*) imposing or authorizing the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act ;[1] or

(*b*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or

(*c*) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or

(*d*) affecting the relations of the Government with foreign princes or states ; or

(*e*) regulating any Central subject ; or

(*f*) regulating any Provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies ;[2] or

(*g*) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or

(*h*) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local Legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local Legislature without previous sanction ;[3] or

(*i*) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local Legislature without previous sanction :

[1] See The Scheduled Taxes Rules, pp. 165-6 above. [Ed.]

[2] See pt ii of Sch. I of the Devolution Rules, pp. 155-61 above. [Ed.]

[3] The Local Legislatures (Previous Sanction) Rules made under this sub-section laid down that

(i) the previous sanction of the Governor-General would not be necessary in the case of laws made *after* the commencement of the Indian Councils Act, 1861, excepting the Indian Penal Code and other enactments mentioned in the Schedule to the Rules ; and

(ii) the previous sanction of the Governor-General should be obtained in the case of laws made *before* the commencement of the Indian Councils Act, 1861, except in the case of those enactments specifically exempted from the operation of this rule by order of the Governor-General in Council.

A list of enactments referred to in item (b) above was published in the *Gazette of India*, No. 1407, dated 19 May 1921.—*General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pt i, pp. 239-47. [Ed.]

Provided that an Act or a provision of an Act made by a local Legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local Legislature of any Province has not power to make any law affecting any Act of Parliament.

(2) *The Reservation of Bills Rules*[1]

(Rules under Section 81A of the Government of India Act)

2. The Governor of any Governor's Province shall reserve for the consideration of the Governor-General any Bill,[2] . . . which has been passed by the Legislative Council of the Province and is presented to the Governor for his assent, if the Bill appears to the Governor to contain provisions [3](in respect of which the Bill has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act)—

(*a*) affecting the religion or religious rites of any class of British subjects in British India, or

(*b*) regulating the constitution or function of any University, or

(*c*) having the effect of including within a Transferred subject matters which have hitherto been classified as Reserved subjects, or

(*d*) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits, or

(*e*) affecting the land revenue of a Province either so as to—

(i) prescribe a period or periods within which any temporarily settled estate or estates may not be reassessed to land revenue, or

(ii) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(iii) modify materially the general principles upon which land revenue has hitherto been assessed, if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the Province.

3. The Governor of any Governor's Province may reserve for the consideration of the Governor-General any Bill,[4] . . . which has been passed by the Legislative Council of the Province and is presented to the Governor for his assent,[5] (if any provisions of the Bill in respect of which

[1] *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pt i, pp. 247-9.

[2] The words 'not having been previously sanctioned by the Governor-General' were omitted by Notification No. 142, dated 8 December 1921 ; see *Gazette of India* (1921), pt i, p. 1631.

[3] These words were inserted by *ditto*.

[4] The words 'not having been previously sanctioned by the Governor-General' were omitted by Notification No. 142, dated 8 December 1921 ; see *Gazette of India* (1921), pt i, p. 1631.

[5] These words were substituted by Notification No. 142 dated 8 December 1921, see *Gazette of India*, (1921), pt i, p. 1631.

it has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act, appear to the Governor)—

(*a*) to affect any matter wherewith he is specially charged under his Instrument of Instructions, or
(*b*) to affect any Central Subjects, or
(*c*) to affect the interests of another Province.

(3) *The Reforms Enquiry Committee on previous Sanction to Provincial Legislation, 3 December 1924*

82. The principal question which has been raised in the evidence before us in regard to the legislative powers of the Councils is the restriction upon those powers due to the requirement of the previous sanction of the Governor-General. . . It has been suggested that the provisions requiring previous sanction for legislation dealing with Provincial subjects should be repealed, and also that previous sanction should only be required for legislative proposals dealing with Provincial subjects which are *specially reserved* for Indian legislation. Particular objection, moreover, has been taken to the requirement of previous sanction for amendments proposed to Bills which have already been introduced in the Council and have received sanction. We have carefully considered this important question. It appears to us to be necessary either closely to define the legislative spheres of central and local Legislatures or else to retain the doctrine of previous sanction. The experience of certain federal constitutions in which there has been an attempt to define closely the legislative powers of the central and local Legislatures indicates the difficulty which arises if this course is followed. We understand in fact that this is one of the reasons why the doctrine of previous sanction was maintained in India. In our opinion even when the spheres have been more closely defined, some provisions regarding previous sanction will be necessary. Such provisions would apply, for example, to provincial legislation affecting the central legislative sphere. The legitimate exercise of the powers of the provincial Legislatures would be unduly hampered without such provisions, and the Central Government might, on the other hand, be embarrassed for a considerable period by the enactment of laws until their validity could be impeached through the Courts. Our recommendations in regard to the separation of functions will slightly reduce the number of cases in which sanction is necessary, but we are not prepared at the present time to recommend any further attempt to define the legislative spheres. We are further agreed that if the doctrine of sanction is maintained it is essential that sanction should be required not only for Bills to be introduced but also for amendments proposed to such Bills. Otherwise amendments may be moved in a local Council and carried which would make the sanction provisions nugatory. We think, however, that as non-official members cannot be expected to be familiar with the law of sanction, Local Governments should as a matter of course forward Bills and amendments promoted by non-official Members for the consideration of the sanctioning authority. This will not prevent a private Member endeavouring to obtain the necessary sanction himself if he desires to do so.

83. Though these are our general conclusions on this question, nevertheless, we support the view that the existing law is unduly stringent in some respects and possibly places greater restrictions on the sphere of provincial legislation than was foreseen or intended. We understand indeed that this view is accepted by the Secretary of State, by the Government of India and by the provincial Governments. The very wide scope of the existing law of sanction is in fact clearly indicated in the evidence of Mr Spence, who has informed us that, 'Experience has shown that all Bills of any magnitude, whatever their subject-matter, will inevitably contain provisions in respect of which previous sanction is required under one or other of the clauses contained in sub-section (3) of section 80A, clauses (*e*), (*f*) and (*h*), being those which have the widest operation.' Under the existing provisions it is in fact clear that provisions in provincial laws which have really become stereotyped require previous sanction. Mr Spence has told us that the Government of India have proposed that a proviso should be incorporated in sub-section (3) of section 80A[1] in the following sense :

'Provided that nothing hereinbefore contained shall be deemed to prohibit the local Legislature of any Province from making or taking into consideration, without the previous sanction of the Governor-General, any law satisfying conditions prescribed in this behalf by rules under this Act.'

We understand that all Local Governments have supported this proposal, and we trust that it will be accepted by Parliament. It will then be possible to provide, for example, that the sanction of the Governor-General shall not be required for any provision in a Bill which re-enacts a provision of any existing provincial law or of a law affecting the same subject matter in another Province. The enactment of a rule-making power on these lines would secure elasticity in the provisions as to sanction and enable advance to be made where advance was expedient and so modify the stringency of the existing law.[2]

IV. The Indian Statutory Commission on Central Control over Provincial Matters, 12 May 1930[3]

255. The separation which the Reforms effected between Central and Provincial duties in no wise affects the responsibility of the Central Government for the financial and administrative stability of India as a whole. The Provincial Governments state that the large independence

[1] See p. 167 above. [Ed.]

[2] The Government of India accepted the recommendation and the Secretary of State agreed to introduce Parliamentary legislation to amend Section 80A(3) on a convenient opportunity. In accepting the recommendation, the Government of India observed that so long as the present form of the Constitution was maintained, it would not be their intention to tamper with the fundamental principles of the law of sanction, but to mitigate the inconvenience resulting from its operation in cases in which that inconvenience is not attended with any compensating advantage.—Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, p. 267.

No further action was, however, taken on the recommendation as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission. [Ed.]

[3] *Indian Statutory Commission Report* (1930), vol. I, pars. 255-60.

of the Centre which they have acquired, has resulted in a great decrease of correspondence with Delhi and Simla. But the responsibilities of the Government of India involve that it should be kept informed of all important matters connected with the Government of the whole country, even when primarily of provincial concern. The obligation to supply information to the Governor-General in Council is imposed by statute, and again more precisely by rule, on both halves of Provincial Governments.[1] Certain Central subjects again are of such a nature as to have little meaning (so far as Governors' Provinces are concerned) apart from the administration of Provincial subjects—for instance, 'statistics' and 'all-India Services'. The proper discharge by the Centre of its responsibilities in such subjects, therefore, seems to require the power of issuing orders to both halves of Provincial Governments. But difficulties have arisen in the exercise by the Centre of its responsibilities for all-India officers serving in Transferred Departments. An essential function of the Centre, which must invade the whole provincial sphere in both its Reserved and its Transferred parts, is 'External Relations'. The adherence of the Indian Government to conventions of the League of Nations and the International Labour Office has involved obligations, financial as well as administrative, on the Provinces, principally in Transferred Departments. The Government of India has, of course, made it a practice to consult all the Provinces before undertaking such commitments. But it has neither disguised the fact that it must retain freedom to override their objections, nor admitted its obligation to consult them in all cases. The principle has here been established that the responsibility of the Centre for Central subjects prevails over the restrictions which have been placed upon its powers of control over provincial Transferred subjects.

256. The obedience which Provincial Governments must render to the Centre is restricted only in the Transferred sphere. So far as the official part of the Provincial Governments is concerned, it is complete. Official nominated representatives of the Provincial Governments in the Central Legislature have not, as a rule, been permitted to vote against the Central Government, though certainly on one occasion, when the Government of India's policy on provincial contributions was under discussion, they have both spoken and voted against it. But, in practice, the power of control possessed by the Government of India over Reserved subjects is qualified, for the reason that even in the Reserved sphere Provincial Governments must do their utmost to act in co-operation with the Legislatures. Thus the Government of India, on one occasion, asked the Government of the United Provinces to reform its jail administration; but when it appeared that the Provincial Legislature would not vote the heavy expenditure which this reform would involve, the Central Government did not proceed to the extreme of insisting that the necessary funds should be demanded from the Legislature and, if necessary, certified by the Governor.

The form in which the Government of India has couched its communications to the Provinces is invariably one of advice and suggestion, and not of command. It might appear, therefore, that it paid no respect to the distinction which exists between its powers in Reserved and

[1] Section 45 of the Act and Rule 5 of the Devolution Rules.

Transferred subjects. But this is not so. The Provinces are well aware that, though they may fully represent their point of view, they must bow to the decision of the Centre in Reserved subjects. The tradition of obedience extends also to the administration of Transferred subjects; though here it might be better expressed as a readiness to fall in with the policy of the Centre, in default of strong reasons to the contrary. This is indeed the basis on which the co-ordinated Government of India proceeds. The Central Government has no inspecting agency of its own. It relies entirely upon its inherent authority, on the written word, and on the presumption that the Provinces will implement its policy to the full extent of their capacity.

Control in the Reserved Field

257. The control which the Centre possesses over the official part of a Provincial Government is exercised most fully and constantly in the sphere of 'law and order'. The Home Department of the Government of India controls the Central Criminal Investigation Department which depends for its information and for assistance in carrying out its duties on the Criminal Investigation Departments of the Provinces. The Home Department is, as we have seen, charged with the general responsibility for internal affairs. It follows all political movements and notes any serious incidents. It has to watch the indications of industrial and inter-communal unrest, and endeavour to keep itself informed of seditious and revolutionary propaganda and crime. It lays down, after consultation with the Provinces, the general lines of policy which the Provincial Governments are expected to follow when such incidents occur. It frequently makes such suggestions as seem to be called for, and these the Provinces naturally accept unless they see some very clear reason to the contrary. It has, from time to time, directed prosecutions to be instituted for seditious crimes which it considered to be of all-India importance. It has called the attention of Provincial Governments to the risks attendant on reduction of their police forces, to the state of crime in a Province, to delay in the disposal of criminal cases, and to overcrowding in jails. It has issued instructions on the treatment of certain classes of persons in prison and on the censorship of films. In land revenue, on the other hand, the control of the Government of India has been limited to the necessities of its own interests and responsibilities. It has, as might be expected, promulgated, with the authority of the Secretary of State, rules regulating the transfer of public land and buildings between itself and the Provinces. In the purely provincial sphere, it has limited its supervision principally to securing that provincial finances should not be detrimentally affected by large alienations of land or land revenue, or wide departure from the accepted principles of assessment.

It appears that only in one case, when suggestions were made of inefficiency in the administration of a provincial Reserved subject, has the Government of India instituted an inquiry in exercise of its powers of superintendence, direction and control. In this instance, a Committee was appointed to inquire into the Bombay Back Bay reclamation scheme, but—it is important to add—this was done at the request of the Bombay Government, and rather with a view to securing an impartial verdict

on the performance of their duties by the officials and employees of the Bombay Government, than on the policy of that Government itself.

The Co-ordinating Power of the Centre

258. The part which the Centre plays in the administration of provincial Reserved subjects is a matter of discretion and so principally of administrative working. The part which it plays in Transferred subjects is of greater constitutional interest. It will be understood, of course, that the Government of India could not interfere, and has, in fact, never attempted since the Reforms to interfere, to secure improvement in the administration of Transferred subjects—as, for instance, to promote an increase of literacy in a particularly illiterate area. The authority which it exercises is of a different nature. It is largely based on realization of the fact that progress in any one Province may depend upon the co-operation of adjoining Provinces, and that co-ordination is best secured by central action. There have thus taken place at Delhi and Simla conferences attended by provincial Education Ministers and Directors of Public Instruction, and provincial Excise and Agricultural Ministers, as well as by Inspectors-General of Police and Jails, and by Finance Members. This has been found a most satisfactory method of pooling experience or initiating a joint policy. It is natural for such conferences to be held under the auspices of the Central Government, and for that Government to help in the enforcement of any decisions reached.

The co-ordinating power of the Centre, which arises naturally from its position, is well recognized in the Constitution. Among Central subjects are 'central agencies and institutions for research'. The Government of India's research institutes such as the Agricultural Institutes at Pusa and Coimbatore, the Veterinary Institute at Muktesar and the Forest Research Institute at Dehra Dun are well known and have achieved remarkable results.[1] At first, the Provinces seem to have shown some disinclination to resign their control of research institutes to the Centre. The Bombay Government, for instance, contended that sugar-cane research should be conducted by that Province, since 'agriculture, including research institutes' was a Provincial subject, but the general tendency since the Reforms has been to extend the co-ordinating power of the Centre more widely into the Transferred field than was contemplated when the Act and the Rules under it were framed. The Indian Central Cotton Committee, constituted in 1921 and given statutory powers in 1923, concerns itself with all questions arising out of cotton-growing from the field to the factory, and has been remarkably successful. Two more recent instances of this tendency may be given here. As the result of the recommendation of the Linlithgow Commission, the principle has been accepted that

'It is the duty of the Government of India, in the discharge of their ultimate responsibility for the welfare of the vast agricultural population of this country, to advance research in every possible way without encroaching upon the functions of Provincial Governments in that sphere.'[2]

[1] *Report of Royal Commission on Agriculture*, pars 26 and 262.
[2] Government of India Resolution of 23 May 1929.

The Government of India has decided, in accordance with this principle, to constitute a central Council of Agricultural Research, consisting of a governing body and an advisory council. The provincial representatives on the governing body are the provincial Ministers for Agriculture. Again in 1927, a Committee was appointed of Members of the Central Legislature (the Indian Road Development Committee),

'to examine the desirability of developing the road system of India, the means by which such development could most suitably be financed and to consider the formation of a Central Road Board for the purpose of advising in regard to and co-ordinating the policy in respect of, road development in India'.[1]

This committee did not, in fact, advise the appointment of a Central Road Board, but recommended that road conferences, at which Provincial Governments should be represented, should be convened periodically by the Government of India. One such conference has already been held and, in addition, a Central Standing Committee on Roads has been appointed to advise the Government of India on road matters.

The giving of advice to Provincial Governments is an important function of all those central offices which exist primarily to discharge some responsibility of the Central Government, such as those of the Inspector-General of Forests and the Public Health Commissioner to the Government of India. The sphere of the latter officer's duties have been defined as (1) research, (2) medical qualifications, (3) port quarantine, including all international obligations under international conventions as regards disease, and (4) the prevention of the spread of disease over India, for instance in connexion with pilgrimages. These duties can, of course, only be discharged in conjunction with the provincial Ministers for Public Health. Again, there has recently been created a Central Board of Irrigation, which consists of the provincial Chief Engineers and the Consulting Engineer to the Government of India. It has advised the Government of India on those important irrigation projects which are submitted by the Provinces for the sanction of the Secretary of State, and upon the rival claims by the Governments of Bombay and the Punjab to the waters of the Indus for irrigation purposes. It is also available to advise the Provincial and Central Governments generally on other irrigation matters.

The co-ordinating power secured to the Central Government by the device by which certain provincial matters are made subject to central legislation, covers a wide category of provincial activities, including (among others) the borrowing and taxing powers of local self-governing bodies, factories, labour questions, infectious and contagious diseases of men, cattle and plants, and standards of weights and measures. Legislation in these subjects has, in practice, been central rather than provincial. The enactments regulating industrial matters which the Central Legislature has passed since the Reforms—a new Indian Factories Act, a Trades Union Act and a Workmen's Compensation Act, for instance—form a large and comprehensive body of law. Thus, while the administration and enforcement of these enactments is wholly provincial, their working is watched by the Central Government, which keeps itself informed by the continual exchange of communications, by conferences and by tours

[1] Government of India Resolution of 3 November 1927.

which the Members of the Government of India and their technical experts make throughout the Provinces.

* * *

Financial Control by the Centre

259. . . . In finance, as in administration, the Reforms effected a formal distribution of interests between the Provinces and the Government of India. But, in this subject of finance, exercise by the Centre of its powers of superintendence, direction and control, and of interpretation and adjustment, offered a ground for greater conflict of interests than in general administration. A decision made in favour of one Province, as when Bengal was granted the remission of its provincial contribution, was regarded as inequitable by other Provinces. An interpretation which went against a Province was sometimes regarded by that Province as an interested decision, if its effect was to benefit central revenues. The general unpopularity of the Meston settlement and the financial stringency of the early days of the Reforms detrimentally affected the relationships of some of the Provinces with the Government of India. In certain cases, ingenuity was exercised in making claims against the Centre for services rendered, attempts were made to strain the natural classification of receipts and expenditure as central or provincial, and provincial interests were somewhat narrowly pursued without proper regard to the requirements of India as a whole. But difficulties of interpretation have now mostly been settled and major matters of dispute adjusted, with the result that unprofitable disputes are now uncommon. The most effective means of reaching harmony on broad principles has been found to be through conferences of Finance Members, which are now held annually.

The Control of Provincial Legislation

260. The Governor-General's powers of issuing ordinances in emergencies for any part of India have not lain dormant. The exercise of this power to meet an emergency such as the Moplah rebellion, has been accepted by popular opinion as necessary. But in one case at any rate—when the Bengal Criminal Law Amendment Ordinance was issued in 1924—it was sharply criticized in the Central Legislature. The exercise of the Governor-General's powers of assent, dissent and reservation has given rise to no difficulties, but criticism has been directed in the Provinces at the wide terms in which are drawn the provisions imposing the obligation of obtaining the Governor-General's previous sanction to all but a small category of provincial enactments. As we have explained, the Governor-General's discretionary powers take the place in the Constitution of any formal distribution of legislative powers between the Centre and the Provinces. They have served their purpose well. If the Provinces have been prevented from invading the proper sphere of the Centre, they have also been protected from many attempts at interference in provincial matters by way of private Members' Bills in the Central Legislature. But the procedure involves that not only provincial Bills, but amendments to provincial Bills, should be submitted

for previous sanction, and, if subsequent delay is to be avoided, it is to the interest of the working of the Provincial Legislatures to give the widest possible interpretation to these provisions. Differences of opinion between the Central and Provincial Governments as to the scope of the section of the Act which imposes this obligation (section 80A) were, at first, not uncommon, but that scope is now becoming a matter of settled interpretation. The section, however, involves a procedure which is necessarily somewhat irksome to the provinces, and any method of enlarging the range of provincial legislation which is exempt from it would be welcomed.

V. The Government of India's Control over Advances made by it and over Provincial Balances: Devolution Rules[1]

21. At any time when he considers this course to be essential in the financial interests of India as a whole, the Governor-General in Council shall have power to require any Local Government to which revenues have been allocated under these rules so to regulate its programme of expenditure as not to reduce the balance at its credit in the public account on a specified date or dates below a stated figure, and shall have power to take the necessary steps by the restriction of issues of moneys to secure this end. Subject to this power, those Local Governments shall be at liberty to draw on their balances, provided that notice of the amount which they propose to draw during the ensuing financial year is given to the Governor-General in Council before such date in each year as the Governor-General in Council may by order fix.

[2][22. (1)] Whenever the Governor-General in Council has, on receipt of due notice of the intention of the Local Government to draw on its balances, required it to reduce the extent of the proposed draft, he shall, at the end of the financial year in which the Local Government is debarred from drawing, credit the Local Government with interest on the amount which it was not permitted to draw. Such interest shall be a charge on the revenues of India, and shall be calculated [3][at a rate which shall be one per cent less than the rate charged by the Governor-General in Council during the year for advances made to the Provincial Loans Fund].

[4][(2) The Governor-General in Council may also pay to a Local Government interest on its surplus balances on such conditions as he may, with the approval of the Secretary of State, prescribe.]

23. Any moneys which, on the 1st day of April 1921, are owed to the Governor-General in Council on account of advances made from the provincial loan account of any Province shall be treated as an advance to the Local Government from the revenues of India, and shall carry interest at a rate calculated on the average rate carried by the total

[1] *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pt i, pp. 215-16.

[2] Renumbered by Notification No. F. 121/6/25, dated 5 October 1925; see *Gazette of India* (1925), pt i, p. 926.

[3] These words were substituted in the above Notification.

[4] This sub-rule was inserted in the above Notification.

amount owed to the Governor-General in Council on this account on the 31st March 1921. The interest shall be payable upon such dates as the Governor-General in Council may fix. In addition, the Local Government shall pay to the Governor-General in Council in each year an instalment in repayment of the principal amount of the advance, and this instalment shall be so fixed that the total advance shall, except where for special reasons the Governor-General in Council may otherwise direct, be repaid before the expiry of twelve years. It shall be open to any Local Government to repay in any year an amount in excess of the fixed instalment.

24. (1) The capital sums spent by the Governor-General in Council upon the construction in the various Provinces of productive and protective irrigation works and of such other works financed from loan funds as may from time to time be handed over to the management of Local Governments shall be treated as advances made to the Local Governments from the revenues of India. Such advances shall carry interest at the following rates, namely :

(*a*) in case of outlay up to the end of the financial year 1916-17, at the rate of 3·3252 per centum ;

[(*b*) in the case of outlay incurred after the financial year 1916-17, at the average rate of interest paid by the Governor-General in Council on loans raised in the open market since the end of that year.][1]

(2) The interest shall be payable upon such debts as the Governor-General in Council may fix.

25. The Governor-General in Council may at any time make to a Local Government an advance from the revenues or moneys accruing to the Governor-General in Council on such terms as to interest and repayment as he may think fit.

26. The payment of interest on loans and advances made under the three preceding rules and the repayment of the principal of an advance under rule 23, shall be a charge on the annual allocated revenues of the Local Government and shall have priority over all other charges, save only contributions payable to the Governor-General in Council.

VI. Raising of Loans by Local Governments

(1) *Section 30(1a) of the Government of India Act, 1919*

A Local Government may on behalf and in the name of the Secretary of State in Council raise money on the security of revenues allocated to it under this Act, and make proper assurances for that purpose, and rules made under this Act may provide for the conditions under which this power shall be exercisable.[2]

[1] This item was substituted by the following by Notification No. F. 326/4/26, dated 26 August 1926, *Gazette of India* (1926), pt i, p. 932, and was given effect to from 1 April 1921.

(b) In the case of outlay incurred after the financial year 1916-17, at the average rate of interest paid by the Governor-General in Council during the financial year preceding that in which the work in question is handed over to the Local Government, on loans raised in the open market during the period from the end of 1916-17 to the beginning of the year in which the work is handed over. [Ed.]

[2] See item 49 of Provincial Subjects. Devolution Rules, pt ii, Sch. I.

(2) *The Local Government (Borrowing) Rules*[1]

2. A Local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely :

(*a*) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connexion with a project of lasting public utility, provided that
  (i) the proposed expenditure is so large that it cannot reasonably be met from current revenues ; and
  (ii) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are made for the amortization of the debt ;

(*b*) to meet any classes of expenditure on irrigation which have under rules in force before the passing of the Act been met from loan funds ;

(*c*) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity ;

(*d*) for the financing of the Provincial Loan Account ; and

(*e*) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

3. (1) No loan shall be raised by a Local Government without the sanction (in the case of loans to be raised in India) of the Governor-General in Council, or (in the case of loans to be raised outside India) of the Secretary of State in Council, and in sanctioning the raising of a loan the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan shall be raised.

(2) Every application for the sanction of the Secretary of State required by this rule shall be transmitted through the Governor-General in Council.

4. Every loan raised by a Local Government in accordance with these rules shall be a charge on the whole of the revenues allocated to the Local Government, and all payments in connexion with the service of such loans shall be made in priority to all payments by the Local Government other than the payments of
  (i) the fixed provincial contribution payable to the Governor-General in Council,
  (ii) interest due on sums advanced to the Local Government by the Governor-General in Council from the revenues of India, and
  (iii) interest due on all loans previously raised by the Local Government.

[1] (Rules under Section 30(1*a*) of the Government of India Act.) *General Rules and Orders made under Enactments in Force in British India* (1926), vol. I, pt i, pp. 207-8.

VII. Working of the Meston Settlement

(1) *Report of the Reforms Enquiry Committee, 3 December 1924*

53. As is well known the allocation of revenues to the various Provincial Governments was decided in the light of the recommendations contained in the report of the Financial Relations Committee. This separation of the provincial finances from the finances of the Central Government, which is usually referred to as the Meston Settlement, has been effected by the Devolution Rules. There can be no doubt that the basis of the conclusions embodied in that Settlement has been seriously affected in certain respects, and as a result the Provinces have not been vested with the resources which were anticipated. The difficulty which has arisen has been referred to in the reports of several Local Governments and also by several witnesses before us. The Madras Government refers to the deep sense of injustice felt with this Settlement as contributing to the dissatisfaction felt at the working of the reforms scheme; and they say that unless the financial embarrassments consequent thereon can be mitigated or removed, no changes whether in the direction of extending the sphere of ministerial control or otherwise will result in material improvement. The Bombay Government say that they have never ceased to protest against this Settlement; complaints are being perpetually made that the departments controlled by Ministers are being starved; and until the financial arrangements existing between the Governments of India and of Bombay are readjusted, no hopes can be held out of the satisfactory working of the Act of 1919. The Bengal Government say that in Bengal the Meston Settlement is one of the main defects in the Constitution; it stood condemned from the outset; and to this more than to any other cause, perhaps, may be attributed much of the discontent against the reforms, which prevails even among the more moderate element. Finally, the Assam Government say that of all the remediable defects which have hampered the working of reforms finance is the most important; if even at this stage the Ministers could be given a surplus, however modest, an enormous improvement in the situation would result.

54. The objections of Local Governments to the Settlement are based upon very different grounds. The Settlement provided for the allocation of the same sources of revenue to different Provinces. An arrangement which gave land revenue to the Provinces and income-tax, except a fraction of the excess over the receipts of the year 1920-1, to the Central Government might be satisfactory to Madras, but would be equally unsatisfactory to Bombay and Bengal. The Settlement also assumed that a sum of 9 crores and 83 lakhs of rupees would be required to balance the first Budget of the Central Government, and this sum was to be found by contributions from the Provincial Governments. The contributions to be paid by the Local Governments were fixed so as, it was thought, to leave each Province with a balance, but in view of the very different receipts which were given to each Province by the allocation of the same sources of revenue to each, the contributions, which it was considered they would be able to afford and which were therefore fixed, varied from 15 lakhs from Assam to 348 lakhs from Madras. It is, we understand, the amount of this annual contribution which forms the basis

of the grievance of Madras. When, however, the position of central finances is improved, and it is found possible to forego the provincial contributions, there should, we assume, be little objection to the Settlement on the part of that Province. The Bombay Government will then, however, only have benefited to the extent of 56 lakhs a year and presumably their finances will not be appreciably improved thereby, and the Bengal Government will only have secured the continued benefit to be derived from the non-payment annually of the contribution of 63 lakhs which they have already been granted for three years.

55. We observe that the Central Government also has been embarrassed by the state of its finances during the period since the introduction of the reforms in the same way as the Provincial Governments. The first financial year under the reforms was the year 1921-2, and the first Budget was therefore based upon the experience of the year 1920-1. The actual deficits of the revenue as compared with the expenditure of the Central Government for this and the two succeeding years were as follows :

1920-1	.. ..	26,00	lakhs of rupees
1921-2	.. ..	27,65	,, ,, ,,
1922-3	.. ..	15,01	,, ,, ,,

There was thus a total deficit of more than 68½ crores of rupees during these three years. It was only with the Budget for the year 1924-5 that the Finance Member was able to announce an estimated surplus on the working of the previous year, 1923-4. We find therefore that the reforms were started when there were not in fact sufficient funds to provide for the needs of both the Central and the Local Governments, and this was due mainly to financial world conditions and not particularly to Indian conditions. The Meston Settlement was framed on the basis that the exchange value of the rupee would equal two shillings, and we are informed that on the basis of the actual charges to be incurred in England which are included in the Budget figures for the current year, this means a deficiency in central revenues of about 12¼ crores of rupees and in provincial revenues of about 78 lakhs of rupees as compared with the Meston Settlement. The deficiency in central revenues due to this cause is thus well in excess of the total provincial contributions. The Provinces also had to meet increases in the costs of establishment rendered necessary by increases in prices which have been estimated as having cost about 10 crores of rupees (including about 1½ crores for the Imperial and Provincial Services) per annum.

56. Though the figures in the preceding paragraph indicate to some extent how much the estimates upon which the Meston Settlement was based have been affected, and though the position was, as we have said, that there were not sufficient funds available to meet the needs of both the Provincial and the Central Governments, we agree with the Local Governments that the difficulty arising from finance has formed one of the main obstacles to the success of the reforms. It is due to it that Ministers have been unable to enter upon a policy of progressive development in the spheres of administration committed to their care. If they had been able to do so, they would have been able to provide an answer to those critics who have reiterated the allegation that the reforms were a sham, and they would also have been able to consolidate their position

or else have been required to make way for other Ministers who could have enunciated a policy more acceptable to the Councils which would incidentally have assisted in the establishment of the responsibility of the Ministers to the Councils. We hope that with an improvement in the finances of the Central Government it will be possible to begin the work of reducing the provincial contributions. As we have shown, however, this is not likely permanently to meet the needs of certain of the Provinces. It is clear that we have not the information upon which to base any recommendations for the revision of the Settlement. We consider also that it is probable that an adequate revision will have to await a considerable improvement in the finances of the Central Government. We think, however, that the Settlement should be revised as soon as a favourable opportunity occurs.[1]

(2) *Indian Statutory Commission Report, 12 May 1930*[2]

Financial Scheme of the Joint Report

391. The Montagu-Chelmsford Report is the most important landmark in the history of financial devolution in India. Its authors, after giving an account of the then existing financial system, based on quasi-permanent allocations and divided heads of revenue, pointed out how seriously such arrangements operated as an obstacle to provincial enfranchisement. Accordingly, when they came to describe the reformed constitution which they proposed for the Provinces, the devolution to Provincial Governments on which they first insisted was financial devolution. They wrote :

> ' The existing financial relations between the Central and Provincial Governments must be changed if the popular principle in Government is to have fair play in the Provinces. The present settlements by which the Indian and Provincial Governments share the proceeds of certain heads of revenues are based primarily on the estimated needs of the Provinces, and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian Government in provincial matters. An arrangement, which has on the whole worked successfully between two official Governments, would be quite impossible

[1] On the question of the revision of the Meston Award the minority of the Reforms Enquiry Committee observed as follows :

' Upon the materials before us it is impossible to examine the merits of the case for each Province or to suggest an alternative to the Meston Award. We think that this is a task which can best be performed by a body of financial experts and even so we apprehend that it would be extremely difficult to arrive at any satisfactory solution independently of large and substantial alteration in the Constitution. Any temporary expedient which may be adopted for the relief of any particular Province is bound to be resented by other Provinces, as was the case when Bengal got a remission of its contribution for a period of three years. Whether a system of provincial contributions will exist in future or the necessity of provincial contributions will be obviated is a question which will require to be examined on the basis of fuller information than we possess. In any case we are firmly of the opinion that the earliest possible opportunity should be taken to put provincial finances on a sound footing, without which we think the development of the Provinces must continue to be retarded.' *Report of the Reforms Enquiry Committee* (1924), p. 145. [Ed.]

[2] Vol. I, pars 391-6.

> between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the Central and Provincial Governments.'[1]

392. The idea underlying the new scheme was that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the central sphere ; that resources with which to meet this expenditure should be secured to the Central Government ; and that all other revenues should then be handed over to the Provincial Governments, which should hence-forth be held wholly responsible for all provincial services. So far, this merely meant that existing resources would be distributed on a different basis. Such a plan does not in itself get over other difficulties which might arise from giving to the Central and Provincial Governments entirely separate resources. The Joint Report declared that almost everyone agreed that a complete separation was in theory desirable, and that difference of opinion was confined to the question of the possibility of carrying it out. But its authors boldly faced the difficulty, and declared for the abolition of ' divided heads '. Taking each main source of taxation in turn, they considered whether it was more appropriate to regard its proceeds as a central or as a provincial receipt, while at the same time they were bound to give weight to considerations of practical administration. The detailed scheme suggested by them was that customs, non-alcoholic excise including salt, general stamp duties, income-tax, receipts from railways and from posts and telegraphs, should be assigned to the Central Government. Land revenue and irrigation, alcoholic excise, forests, court fee stamps, registration fees, and certain minor sources of revenue should be entirely provincial.

The calculations which were before the authors of the Joint Report led them to estimate that this distribution of sources of revenue would result in a deficit in the Central Budget and they, therefore, proposed, as a transitional measure, a system of contributions from each Province to the Central Government. Such contributions were to be a definite proportion of the estimated provincial surplus, i.e. of the difference between the estimated gross revenue of each Province, under the new scheme of distribution, and that Province's estimated ' normal expenditure '.

In order to find some means of enlarging the taxing power of Provincial Governments, they recommended that certain subjects of taxation should be scheduled as reserved for the Provinces, but that the residuary powers of taxation should be retained in the hands of the Government of India, with whom the ultimate responsibility for the security of the country rested. It will be observed that this last proposal is not entirely consistent with the general principle previously laid down for the distribution of financial resources.

Appointment of Meston Committee

393. The financial scheme contained in the Joint Report met with much opposition, particularly from the agricultural Provinces of Madras and the United Provinces, whose aggregate initial contributions,

[1] *Montagu-Chelmsford Report*, par. 200.

as proposed in the Report, had been fixed at more than half the total contribution from all the Provinces. On the suggestion of the Government of India, endorsed by the Joint Select Committee of Parliament, a Committee, known as the Financial Relations Committee, was appointed, primarily to devise a scheme of provincial contributions, and also to advise on the claims of Bombay to a share of the proceeds of income-tax. The Committee consisted of Lord Meston, Mr Charles Roberts, and Lieutenant-Commander E. Hilton Young, and its Report is usually known as the 'Meston Report'.[1] The Meston Committee explained in its Report that it was precluded from recommending any alteration in the scheme of distribution of the sources of revenue, unless it found the strongest reasons for such a course. It is necessary to emphasize this, for it is not always realized that many of the defects of the so-called 'Meston Settlement' which have provoked severe criticism during the last few years, are inherent in any scheme for the complete separation of the sources of revenue, and for this separation the Meston Committee was not responsible.

The Meston Report

394. The Meston Committee reported in March 1920. It generally endorsed the conclusions of the Montagu-Chelmsford Report, and advised against a division of income-tax proceeds, while recognizing that it would not be possible permanently to exclude Provincial Governments from some form of direct taxation upon the industrial and commercial earnings of the people. It recommended that general stamps be made provincial, for financial and administrative reasons. As regards the initial contributions, it found that there was general agreement as regards estimates of provincial revenue, but that the estimates of normal expenditure were very strongly contested. The Committee, therefore, decided to follow the line of least resistance, and to assess the initial contributions on the 'increased spending power' of each Province resulting from the new scheme of distribution, i.e. the additional income which each Province would acquire on the separation of the sources of revenue. The initial contributions were not, however, intended 'in any manner to represent the ideal scale on which the Provinces should in equity be called upon to contribute'. These initial contributions were to be reduced or increased over a period of seven years so as to conform to certain 'standard proportions' based on the relative taxable capacity of the Provinces, their indirect contributions to the Central Government, the relative incidence of central taxes, and other economic factors.

Action taken on Meston Report

395. The proposals of the Meston Committee met with a very mixed reception. Some Provincial Governments were content with the contributions proposed for them, but certain Provinces—particularly Bombay, Bengal and Madras—very strongly protested against the scheme, though the points of attack were not identical in each case. Some disliked the initial contributions, some the scheme of standard contributions, while Bombay contested the very basis on which the allocation was made. The Meston plan was embodied in draft rules to be made

[1] *Report of the Financial Relations Committee,* Cmd. 724 of 1920.

under the new Government of India Act, and in this form came before a Joint Select Committee of Parliament. The Committee accepted only the scheme of initial contributions. It considered that the ideal proportions suggested by the Meston Committee should be reached, not by a process of redistribution, but by a gradual reduction of the aggregate contribution. The aim should be the total extinction of these contributions and not a perpetuation of standard contributions. While definitely opposed to provincialization of the taxation of income, the Joint Select Committee recommended that, on grounds of policy, Provinces should be given some share in the increase of revenue from income-tax. Parliament adopted in substance the recommendations of the Joint Committee.

The Meston Settlement

396. Such, in brief, is the history of the scheme commonly known as the 'Meston Settlement'. The fiscal relations between the Central Government and the Provincial Governments are laid down in rules made under the Act. These rules are the Devolution Rules.[1]

* * *

The more important sources of provincial revenue are defined as follows:

(1) Receipts accruing in respect of provincial subjects (which include irrigation, land revenue, forests, excise on alcoholic liquors and narcotics, stamps, and minerals).

(2) A share in the growth of revenue derived from income-tax collected in the Provinces, so far as that growth is attributable to an increase in the amount of income assessed.

(3) The proceeds of any taxes which may be lawfully imposed for provincial purposes.

The new taxes which a Province may levy are not, however, specified in the Devolution Rules. The procedure regulating such taxes is laid down in section 80A of the Act itself, which requires the previous sanction of the Governor-General in Council for the introduction of any legislation in Provincial Councils imposing new taxes (except those specified in a schedule as exempted from this provision), or affecting the public debt of India or the customs duties or any other central tax. Among the 'scheduled taxes' are succession duties and taxes on betting, advertisements, amusements and specified luxuries.

The sources of revenue of the Central Government are not specified as such, but the subjects classified as Central include customs, income-tax, salt, posts and telegraphs, railways, the cultivation of opium and its sale for export. The list of Central subjects also includes an item reserving to the Central Government all matters not included among Provincial subjects.

The Devolution Rules also provided for the payment to the Central Government of the contribution fixed by the Meston Committee. The contributions to be made by the Provinces to meet the central deficit varied widely in amount, from 348 lakhs of rupees in the case of Madras, 240 lakhs in the case of the United Provinces and 175 lakhs in the case of the Punjab, to 63 lakhs from Bengal, 56 from Bombay, 22 from the

[1] See pp. 161-5 above. [Ed.]

Central Provinces and 15 from Assam. Bihar and Orissa was to make no contribution at all. The proportions in which these contributions were to be reduced, in case the Central Government found it possible to do so, were specified in these Rules, which also contained a provision under which, with the previous sanction of the Secretary of State, the Government of India could in emergencies raise the contribution of any Province. Actually, no such emergency arose, and the contributions were gradually reduced and finally extinguished in 1927-8.

Section F : Inquiry into the Working of the Reforms

I. Summary of the Conclusions of the Reforms Enquiry Committee, 1924[1]

The majority section recommends that by practice the Secretary of State's control should be relaxed on matters affecting purely Indian interests. The Minority does not build up much hope on such a convention.[2] The Majority recommended that (1) high officials mentioned in sub-section (1) of section 110 of the Government of India Act should be exempt from the jurisdiction of all Courts, and not merely as at present from the original jurisdiction of High Courts ;[3] (2) that Courts should be barred from premature interference with Presidents of the Legislatures ;[4] (3) that the Presidents, Deputy Presidents and Council Secretaries should not be required to vacate their seats on accepting their office ;[5] (4) that the powers of the Governor-General in Council to secure by declaration that the development of a particular industry shall be a Central subject

[1] India in 1924-5. A statement prepared for presentation to Parliament in accordance with the requirements of the 28th Section of the Government of India Act (5 & 6 Geo. V, c. 61), pp. 378-81.

[2] See pp. 19-20 above. [Ed.]

[3] The Government of India did not accept the recommendation, and made the following comments : 'The Majority stated that their reason for making this recommendation was that if the immunity enjoyed by the Governor-General and other high officials is to be maintained, it should be made complete, and the jurisdiction of all Courts should be barred in respect of the matters. . . Though it can be argued that the present position is anomalous in that the immunity conferred applies only to the original jurisdiction of the High Courts of judicature, it was felt that it would not be an easy proposition to defend that because it was found necessary, for reasons which have now little more than historical interest, early in the latter half of the 18th century to exempt the Governor-General and his Council from the jurisdiction of the Supreme Court, and because logic has from time to time demanded the extension of an analogous privilege to certain other high officials as their posts were created, it is therefore necessary now to alter the whole character of the judicial exemption which is conferred by a section which might be described as a relic of the historic past.'—Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. IV, pp. 220-1. [Ed.]

[4] No action was taken pending the inquiry by the Statutory Commission.—ibid., p. 227. [Ed.]

[5] This recommendation was accepted by the Government of India and the Secretary of State agreed that parliamentary legislation to give effect to it by the amendment of Sections 63E and 80B of the Act would be undertaken at a convenient opportunity.—ibid., p. 228. But no further action was taken as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission. [Ed.]

should be modified so as to relax the existing restriction and allow the power to be exercised with the concurrence of the Local Government or Governments concerned ;[1] (5) that the existing disqualification for membership of the Legislatures because of conviction by a Criminal Court should be modified by increasing the period of sentence constituting such disqualification from six months to a year, and, subject to provisions to secure uniform action, by enabling its removal to take effect through the orders of the Local Government, instead of only by pardon ;[2] (6) members of all Legislatures should be exempted from serving as jurors or as assessors and from arrest and imprisonment for civil cases during the legislative session and for a period of a week before or after the session ;[3] (7) that the corrupt influencing of votes within any Legislature by bribery, intimidation and the like should be made a penal offence.[4]

The Minority express no objection to the above recommendations.

The Majority recommend the constitution of two Standing Committees of the Indian Legislature on Bills affecting Hindu and Muhammedan law respectively ; the Minority hold that the question has not been fully examined ; and that existing safeguards are sufficient against hasty legislation.[5]

The Majority recommend that women should be allowed election or nomination as members of a Legislature provided the Legislature concerned passes a resolution approving of such a step.[6] The Minority favours the removal of all restriction of rules against women being enfranchised and elected to Legislatures. The Majority recommend that there should be the power of nominating both official and non-

[1] The Government of India did not accept the recommendation and observed : 'It was felt that this recommendation, if accepted, would cause difficulty, should any Local Government not agree in a declaration proposed to be made by the Governor-General in Council. For example, if it were decided to give bounties to encourage the production of a particular material, the development of such production must be made a Central subject before bounties can be given. If any Local Government objected to the declaration, after the proposed amendment had been made, then the subject could not be made a Central subject so far as that Province is concerned, and accordingly the whole object of the declaration might be defeated. The Committee apparently assumed that the amendment would be in furtherance of provincialization, but it clearly could have little influence in that respect.'—*Indian Statutory Commission Report*, vol. IV, p. 226. [Ed.]

[2] The Government of India accepted the recommendation and made necessary changes in the Electoral Rules by Notifications dated 23 January 1925.—ibid., p. 238. [Ed.]

[3] The Legislative Members Exemption Act, 1925 (Act XXIII of 1925) was placed on the Statute Book giving effect to this recommendation.—ibid., p. 239. [Ed.]

[4] The Government of India considered that sections 503, 506 and 507 of the Indian Penal Code covered the points except in respect of bribery. The recommendation was accepted and legislative action to give effect to it was also taken. —ibid., pp. 240-3. [Ed.]

[5] A resolution giving effect to the recommendation was passed by the Council of State on a motion made by the Home Secretary on 16 September 1925. A similar resolution was moved on 17 September 1925 in the Legislative Assembly and at the suggestion of Mr M. A. Jinnah the subject was held over for consideration by the new Assembly.—ibid., pp. 229-30. [Ed.]

[6] The recommendation was accepted by the Government of India, and with the sanction of the Secretary of State, the Electoral Rules were amended by notification dated 26 April 1926.—ibid., p. 232. [Ed.]

official experts on Bills ;[1] and that there should be special representation for factory labour in the Assembly, if possible by election.[2]

Dealing with the Provincial Governments the Majority, with the general concurrence of the Minority, recommend (1) that joint deliberation between the two halves of the Executive on important questions should be definitely enjoined by a rule in the Devolution Rules,[3] (2) that the Devolution Rules and the Instrument of Instructions should be modified to lay down joint responsibility of the Ministry.[4] This purpose the Minority suggest should be achieved by amending the Act. (3) The Ministers' salaries should be fixed by Statute at a minimum of three-fifths of the salary of an Executive Councillor ; otherwise the salary may be varied by an Act of the local Legislature.[5] The Majority point out in this connexion that it was never intended that there should be no Ministers. They recommend that motions for nominal reduction of salary during voting on demands,[6] and motions of no confidence should be allowed to enable responsibility of the Ministers to Council being enforced.[7] (4) The

[1] Such a power was conferred by proviso (b) of sub-section (2) of Section 72A of the Government of India Act on the Governors in respect of Provincial Legislative Councils and it was felt that the omission to confer such a power on the Governor-General in respect of the Central Legislature was an oversight. The Secretary of State agreed to undertake Parliamentary legislation to amend sub-section (1) of Section 63A and sub-section (2) of Section 63B to give effect to the recommendation when a convenient opportunity presented itself.—*Indian Statutory Commission Report*, vol. IV, pp. 236-7. But no further action was taken as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission. [Ed.]

[2] See pp. 129-32 above. [Ed.]

[3] See pp. 81-4 above. [Ed.]

[4] See pp. 78-80 above. [Ed.]

[5] While making this recommendation the Committee referred to the refusal of the Bengal Legislative Council to provide any salary for the Ministers, and to the vote of the Legislative Council of the Central Provinces granting the Ministers a salary of Rs 2 per annum only, and held that it was never intended by Parliament that the Government of India Act, 1919, should give power to the Legislative Council to decide whether Ministers were or were not to form a part of the Government, and Parliament did intend that the Ministers should get a reasonable salary. The object of the recommendation was to retain the constitutional position that disapproval of a Minister's policy may be indicated by a motion for the reduction of his salary and at the same time to ensure that the Ministers should obtain a reasonable salary. The Government of India accepted the recommendation and the Secretary of State agreed to undertake Parliamentary legislation to amend Section 52 on a convenient opportunity.—ibid., pp. 247-9. But no further action was taken as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission. [Ed.]

[6] The recommendation was accepted by the Government of India, but no further action was taken as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission.—ibid., p. 273. [Ed.]

[7] In accepting the recommendation the Government of India made the following observations : Effect has been given to by a new rule 12-A inserted in the Legislative Council Rules of the Governors' Provinces by notifications issued on the 27th October 1926, motions under which require the consent of the President and are subject to the following restrictions, namely :

(*a*) leave to make the motion must be asked for after questions and before the business for the day is entered upon ; and

(*b*) the member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written notice of the motion which he proposes to make.

The rule accepts the suggestion of the Committee that in order to prevent the unnecessary harassment of Ministers the person giving notice of a motion, whether

control of the Governor over the Ministers should be more expressly indicated by amending the Instrument of Instructions so that, subject to the power of interference to prevent unfair discrimination between classes and interests and to protect Minorities and to safeguard his own responsibility for Reserved subjects and members of the Services, the Governor should not dissent from the opinion of his Ministers.[1] (5) Council Secretaries should get a reasonable salary to be fixed by the Legislature. Their appointment should be recommended by the Minister to the Governor and they should vacate their office with the Ministers.[2] (6) The word ' may ' in clause (ii) of rule (2) of the Transferred subjects Temporary Administration Rules should be changed to ' shall '.[3] (7) The rules of executive business should be changed enabling a Member or a Minister to recommend to the Governor that the subject be considered before a joint Cabinet or before the side of the Government concerned ; that a Secretary or other officer with a right of direct access to the Governor should inform the Minister of every case in which he differs from him and in which he proposes to refer to the Governor.[4] In this respect the Minority section object to the right of direct access to the Governor being enjoyed by the Secretary or other permanent official in the case of Transferred Departments.

The Majority recommend the transfer of forests, unless the Local Governments can make out a convincing case against the proposal ; the transfer of fisheries and excise in Assam ; the transfer of boilers, gas and housing of labour, provided that boilers and the housing of labour remain subject to central legislation. They further recommend the transfer of land acquisition, of provincial Law Reports, and provincial Government Presses should be considered. As regards stores and stationery, they suggest the removal of the power of the Secretary of State for framing rules in respect of imported stores and stationery.[5]

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of want of confidence or disapproving the policy of the Minister in a particular respect, should show that he has the support of about one-third of the Members of the Council. The numbers specified in the rule for each provincial Legislative Council are the largest even integers which are less than one-third of the present strength of each Council.—*Indian Statutory Commission Report*, vol. IV, pp. 122-3. [Ed.]

[1] See pp. 55-6 above. [Ed.]

[2] This recommendation which involved the amendment of Section 52 of the Government of India Act was agreed to by the Government of India.—ibid., pp. 255-6. But no further action was taken as the political future of India was thrown into the melting pot with the appointment of the Statutory Commission. [Ed.]

[3] This was only a drafting error which was sought to be corrected. The proposed amendment made it clear that the Governor had no discretion but to take charge of the administration of the Transferred subjects in the case of a vacancy in the Ministry, if it could not be provided for by entrusting the responsibility to an available Minister. The proposal was accepted and necessary change in the rules made by notification dated 29 April 1926.—ibid., p. 254. [Ed.]

[4] The Government of India commented that this recommendation was substantially met by the rules in force in several Provinces. Rule 8 of the Rules of Business in Bengal was as follows :

> Rule 8. Any case may, at any stage, if the Secretary in the Department to which the case belongs thinks fit, be submitted by him to the Governor :
>
> Provided that when a case is so submitted to the Governor, the Member or Minister in charge shall be at once informed of the fact by the Secretary.—ibid., p. 253. [Ed.]

[5] Regarding the Committee's recommendations for the transfer of additional subjects to the control of the Ministers and the action taken thereon. see pp. 61-5 above. [Ed.]

It is stated in the Minority Report that on the assumption that the principle of Dyarchy must be maintained, Mr Jinnah proposed to transfer all subjects except law and order, subject to such adjustments and further definition of Central and Provincial subjects as might be determined. With this opinion Dr Paranjpai agreed. Sir Sivaswamy Iyer also agreed with the limitation, but he was not prepared to endorse the suggestion for the adjustment and definition Central and Provincial subjects without further examination of details. Sir Tej Bahadur Sapru did not object to the transfer of any subject, but consistently with the views he holds on the practical difficulties of working Dyarchy, he was not prepared to recommend the transfer of any subject.

The Majority recommended the rearrangement on a more logical basis of the list of subjects annexed to the Devolution Rules.[1] They recommended that the existing stringency of control over provincial legislation should be modified.[2] They recommend that the provision making University legislation and the Calcutta University subjects of Indian legislation should be deleted.[3] They also desired that it should be made clear that the Governor may return a Bill passed by one Legislative Council for reconsideration by a new Council in whole or in part ;[4] and that the Legislative Council Rules should be amended to secure that motions may not be moved for the omission of the whole grant when demand is made for a grant.[5]

The Majority recommend that the six months' residential qualification should not be required for European seats ;[6] while the Minority are opposed altogether to the retention of the residential qualification. The Majority further recommend the representation of the Depressed Classes and factory labour in local Councils, if possible by election, but oppose any widening of the general franchise. On the other hand, the Minority favour a lowering of the franchise which would give the Depressed and working classes opportunity of entering the Legislatures through the general electorate.[7]

The Majority recommend the revision of the Meston Settlement as soon as a favourable opportunity occurs,[8] while the Minority consider that a revision had better take place along with the general revision of the Constitution. The Majority recommend (1) that the Finance Member should not be in charge of any of the main spending departments ;[9]

[1] See p. 62 above. [Ed.]
[2] See pp. 169-70 above. [Ed.]
[3] See p. 62 above. [Ed.]
[4] The recommendation was not accepted by the Government of India.—Memoranda submitted by the Government of India and the India Office.—*Indian Statutory Commission Report*, vol. IV, pp. 270-1. [Ed.]
[5] This recommendation was accepted and the rules amended by Notifications on 27 April 1926.—ibid., p. 274. Also, *Report of the Reforms Enquiry Committee* (1924), par. 89. [Ed.]
[6] This recommendation was accepted and the rules amended by Notifications issued on 8 July 1926.—ibid., pp. 276-9. [Ed.]
[7] See pp. 129-32 above, for the detailed recommendations of the Reforms Enquiry Committee ,1924. [Ed.]
[8] See pp. 179-81 above. [Ed.]
[9] The Government of India accepted this recommendation, and in 1926 requested Provincial Governments to give effect to it to the fullest extent possible.—ibid., p. 280. [Ed.]

(2) that Ministers should be allowed to have Financial Advisers ;[1] (3) that the Devolution Rules should definitely provide that any revenues that may become available during the course of the year should be distributed between the Reserved and the Transferred Departments ;[2] (4) that Members and Ministers should be given enhanced powers of re-appropriation ;[3] (5) that provincial balances, if feasible, should be separated from Central balances and audit from accounts ;[4] (6) that the existing provision regarding borrowing power should be extended to include, for example, expenditure on the financing of industries by private persons.[5]

The Majority Report recommends that any action necessary for the protection of the Public Services in the exercise of their functions, of the enjoyments of their rights and privileges should be taken ; that control of the Services in the Transferred field should be vested in a Public Service Commission ; that the rules for recruitment should provide, with due regard to efficiency, that all communities should receive representation in the Public Services, if it can be obtained from among persons who have passed the prescribed efficiency bar. The Minority recommend that the control of the Public Service Commission be vested in the Government of India. The Minority oppose in principle the official bloc in the Councils ; consider the abolition of communal representation at present impossible ; oppose the nomination of Members except for specific Minorities ; urge the formulation of a definite scheme of Indianization of the Army ; and propose the limitation of the certification powers of the Governor-General by the omission of the words ' or interests ' from section 67B.

II. General Conclusions regarding the Working of the Reforms and future constitutional Advancement : Minority Report of the Reforms Enquiry Committee, 3 December 1924[6]

While we agree with the Majority that the Constitution, as a whole, requires to be worked by reasonable men in a reasonable spirit if deadlocks are not to ensue, we venture to think that this will hold good in

[1] This recommendation was accepted and the necessary amendment of Devolution Rule No. 36 was made by Notification issued on 15 July 1926.—ibid., p. 281. According to the amended rule it was the duty of the Financial Adviser to assist the Ministers in the preparation of proposals for expenditure and generally to advise the Ministers in matters relating to finance. The rule also provided for delegation by the Finance Department to the Financial Adviser of all or any of its functions. [Ed.]

[2] This recommendation was accepted and necessary amendment of Devolution Rule 31 was made by Notification issued on 15 July 1926.—ibid., p. 282. [Ed.]

[3] See pp. 90-1 above. [Ed.]

[4] The Government of India accepted this recommendation, but were of opinion that the change could not be introduced at a moment's notice and that the new system must be slowly evolved with all possible caution.—Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. v, pp. 1030-8. [Ed.]

[5] The Government of India had no objection to the principle of the recommendation. Memoranda submitted by the Government of India.—*Indian Statutory Commission Report*, vol. iv, pp. 285-6. [Ed.]

[6] *Report of the Reforms Enquiry Committee* (1924), pp. 201-3.

the case of any other Constitution. In our opinion, the system of Dyarchy was during the first three years everywhere worked in the Legislatures by men most of whom were professedly its friends and who generally speaking tried to work it in that spirit of reasonableness which is referred to by the majority of our colleagues, and it is no exaggeration to say—indeed this is also the testimony of several Local Governments which we have quoted above—that generally a spirit of harmony and co-operation prevailed between the Legislature and the Executive, notwithstanding the fact that the atmosphere outside was for some time markedly unfavourable. The Indian Ministers and Members of Executive Councils also, upon whom new opportunities of service were conferred, appear to us to have been within the sphere of their executive duties, equally eager to work the Constitution in the same spirit of reasonableness, and yet differing from the majority of our colleagues we have been forced to the conclusion that the present system has failed and in our opinion it is incapable of yielding better results in future. The system has been severely tested during the course of this year and its practical breakdown in two provinces, viz. Bengal and the Central Provinces as a result of the opinions of the majority of the Members of the Councils of those two Provinces who refuse to believe in the efficacy of Dyarchy and the tension prevailing in the other Legislatures for similar reasons, point to the conclusion that the Constitution requires being overhauled. It has failed in our opinion for several reasons : (1) There are the inherent defects of the Constitution which though theoretically obvious at its inception have now been clearly shown by actual experience to exist. (2) The Minister's position has not been one of real responsibility. (3) While in a few Provinces the practice of effective joint deliberation between the two halves of the Government has been followed, in several of them it has not been. (4) Excepting to a partial extent in Madras, almost everywhere else the Ministers have been dealt with individually by Governors and not on the footing of collective responsibility. (5) The close inter-connexion between the subjects of administration which have been divided into ' Reserved ' and ' Transferred ' has made it extremely difficult for Legislatures at times to make in practice a distinction between the two sections of the Government, with the result that the policy and administration of the Reserved half of the Government have not infrequently been potent factors in determining the attitude of the Legislatures towards the Ministers, and have also in our opinion prejudiced the growth and strength of parties in the Councils. (6) The Meston Award has crippled the resources of the Provinces. It has been the corner-stone of the entire financial system, and it has prevented Ministers from developing nation-building departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules which we have noticed before and the Constitution and the working of the Finance Departments have put a severe strain on the system.

* * *

We think that the Bihar Government has correctly summed up the position in the Provinces by saying that Dyarchy is working ' creakily ' and ' minor remedies may cure a creak or two '. We have examined

in detail the sections of the Government of India Act and the Rules made thereunder with a view to see how far ' creaks ' discovered can be ' cured '. We are satisfied that this process, though it may lead to some improvement of the administrative machinery in some respects, will not produce any substantial results. We do not think that the suggested amendments if effected will afford ' valuable training towards responsible government ' or will provide any solution of the difficulties which we have discussed in our chapter on political conditions,[1] or that they will strengthen the position of the Provincial Governments in relation to their Legislatures or that of the Central Government in relation to the Assembly. The majority of our colleagues say that no alternative transitional system has been placed before us. We think that no such alternative transitional system can be devised which can satisfactorily solve the administrative or political difficulties which have been brought to our notice. To our mind the proper question to ask is not whether any *alternative transitional* system can be devised but whether the Constitution should not be put on a permanent basis, with provisions for automatic progress in the future so as to secure stability in the Government and willing co-operation of the people. We can only express the hope that a serious attempt may be made at an early date to solve the question. That this attempt should be made—whether by the appointment of a Royal Commission with freer terms of reference and larger scope of inquiry than ours or by any other agency—is a question which we earnestly commend to the notice of the Government.

III. The Earl of Birkenhead, Secretary of State for India, on the Working of Dyarchy and the Report of the Reforms Enquiry Committee, 7 July 1925[2]

The Act of 1919 was admittedly an experiment. No country in the world has ever been confronted with problems comparable to ours in India. Of the 440 millions of British citizens who constitute the British Empire, 320 millions are Indians. The loss of India would mean a shrinkage in the Empire from 13,250,000 to less than 11,500,000 square miles. Our problem is, in fact, and always has been, one of prodigious difficulty. It is to accommodate the minds of the East to those of the West, or if you prefer so to say it (I have no prejudice in the matter), the minds of the West to those of the East. History can, in fact, in all its courses afford no parallel for such a partnership.

* * *

It is extremely important that we and others should realize with precision what was done by the Government of India Act, 1919. Its permanent and static effect is unquestionably contained in the Preamble. The Act itself was admittedly fluid and experimental. I shall not feel that I am wasting the time of your Lordships if I ask leave to remind you of the terms of the Preamble. Its language ought to be borne in mind by every instructed critic of our Indian policy and of the actual

[1] *Report of the Reforms Enquiry Committee* (1924), pp. 174-81. [Ed.]
[2] *Parliamentary Debates : Lords* (1925), vol. LXI, 4 May to 9 July, pp. 1069-92.

Indian situation with which I have to deal. These were the words of the Preamble; this is the obligation contained in that Preamble to which, and to which alone, we set our hands:

'Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire:

'And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:

'And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

'And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:

'And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities:'

These words expressed the deliberate and deeply considered decision of Parliament. Comformably with the principles laid down in this Preamble, one Constitution or another might, at one time or another, be attempted. Experience educating us, or informing our critics in India, might induce us to make an amendment here or an advance or a variation there. But the whole message as we understand it, of our situation in India, with all that it involves in the storied past, in the critical present, and in the incalculable future, is to be read in that Preamble. We shall not be diverted from its high obligations by the tactics of restless impatience. The door of acceleration is not open to menace; still less will it be stormed by violence. But there never has been a moment since the Constitution was adopted in which the Government of India, acting in harmony with the Government at home, has not been vigilantly and attentively considering the spirit in which the present reforms have been received in India. It has indeed been an imperative and urgent duty for my predecessors and myself so to consider them. Wise men are not the slaves of dates; rather are dates the servants of sagacious men.

Developments have been easily conceivable to me—are still not wholly inconceivable to me—in which the acceleration of the date of the Royal Commission might have been recommended even by very cautious statesmen. I should, however, be failing in my duty if I did not make plain my clear and definite impression that the tactics hitherto pursued by the most highly organized Party in India could not have been more happily conceived if they had been subtly intended to forward the cause of reaction. A Constitution was given which, whatever its defects, beyond question afforded great opportunities to the politically minded—if I may adopt a phrase I do not specially admire—among the Indian peoples. The opportunities not ungenerously offered might have

been made the occasion of a sincere co-operation uniting the ancient and sophisticated traditions of the East with the more practical experience of the West. I suspect that a really gifted national leader would have used the Constitution, with all its possibilities of extension, in this sense.

No such leader was forthcoming. We have been confronted everywhere by those who are our principal opponents, with a blank wall of negation. They did not say: 'You have not given us enough; but we will prove by our use of that which you have given that we are fit for more.' And yet such an attitude would have been both sensible, practical and politic. What is ten years in the age-long history of the immemorial East? Our critics took a different line. They said: 'We will have nothing whatever to do with your Constitution.' Borrowing a quotation which they would perhaps have been unwilling to employ, they almost said, 'East is East and West is West, and never the twain shall meet'. They ignored the view, and I think they were profoundly mistaken in doing so, that, strange and apparently incongruous as is the partnership between the two countries, each has much to contribute to the thought and inspiration of the other. The art, the civilization, the sophistication, the literature and the philosophy of India, though spread over an incredibly wide field and derived from many confluent streams, contain an individual quality to which, in their subtlest elements, Western thought has not attained.

* * *

'Has the Montagu-Chelmsford reform succeeded, or has it failed?' My Lords, I cannot say that it has failed. It has been exposed to every cruel mishap which could befall a new Constitution, freely conceived and generously offered. Most of the popular leaders in Indian life have abused and defamed it. It has never been given a chance. Mr Montagu undoubtedly looked, and surely he was entitled to do so, to those who cherished the most sanguine expectations of Indian political capacity to co-operate in his great task. These expectations were not realized. The critics of Indian capacity for self-government would indeed have been helpless had wiser counsels prevailed in India. Suppose, for instance, that judicious and sagacious co-operation had been exhibited by the leaders of Indian thought. Does anyone imagine that reactionary critics of those reforms in this country could in that event have retarded the chariot of progress? Had that which was given been used with cheerful goodwill to justify the gift of that which was still sought, the task of acceleration would have been easy indeed. Unfortunately, the leaders of Indian thought contributed a different bias; and the most highly organized political Party in India wasted its energies upon the futile attempt to destroy that which we had conceived, at least in its first fruits, to be a generous experiment.

But not all the resources of a very adroit and sophisticated Party have availed to destroy this experimental Constitution, and indeed, I, who was prepared to curse, upon the balance of the whole matter find myself almost inclined to bless. These general observations, very necessary to be borne constantly in mind, lead me to inform your Lordships more closely of the results of the working of the new Constitution. We

are aided in the task of attempting a general survey of its workings up to the present in different parts of India by the reports which have recently been presented by the Governments concerned. In the main I accept and am prepared to justify and defend them.

In Madras the transitional Constitution has worked with a great measure of success. Ministers have used their influence to steady public opinion and feeling, and have displayed a general moderation and no small measure of statesmanship. The Governor in Council has stated that if an earnest endeavour to work on constitutional lines is a qualification for political advance, the Madras Presidency has shown itself fitter for an advance than any other Province. It is not my wish or concern to dispute that claim.

In the present Council of Bombay, the Swarajist Party is the strongest in numbers, but does not command a majority, and it is pledged to a policy of refusal of political responsibility. The Ministers were, therefore, selected from the smaller groups, a circumstance which must obviously be a source of weakness. Lacking sufficient support from their followers, they are driven to lean precariously upon the official vote, and so the distinction between the two halves of the Government has been almost completely obscured. The Bombay Government has recently pointed out that the main object at present must be to strengthen the position of the Ministers and to encourage the organization of Parties.

In the first Council elected in Bengal, progress was made and some solid achievements were recorded. The Government claims with justice that Ministers were able to influence a sufficient number of the Members to make it possible, with the aid of officials, to carry through a considerable amount of useful legislation. The second Council contained a large and influential body belonging to the Non-cooperation Party, which is pledged, of course, to prove that the present Constitution is unworkable. This body was joined by the Independents, and the combined Party commands more than 60 votes in a House of a total strength of 140. The possibility is by no means to be excluded that at the next General Election there may be a return of an absolute Swarajist majority, taking office with the avowed intention of wrecking the Government from within. The Government points out that the Constitution requires to be specially considered from the point of view of giving the Executive power to deal with obstruction.

Since this Report was framed by the Local Government, the Bengal Legislative Council has very plainly indicated that it prefers to dispense with Ministers and the diarchic Constitution. Accordingly, the Government of India and I had no option but to suspend the transfer of subjects in that Province. Your Lordships will not fail to observe that whether the Constitution was good or whether the Constitution was bad, it had at least plainly contemplated the very contingency which has in fact happened, and whether it is a weak point of the Constitution or whether it is a strong point that has assumed the limelight in Bengal, those who framed the Constitution are at least entitled to point out that the Constitution still shows the reserve of strength with which it was endowed at the time it was drafted.

The Government of the United Provinces say that it is constantly alleged by their enemies and critics that the reforms have failed. If

this means that the Constitution has definitely broken down they absolutely deny the statement. Since the collapse in its original form of the non-cooperation movement, it is claimed that the internal conditions of the Province have steadily improved, and except for the tension between Moslems and Hindus—which has nothing whatever to do with the Constitution—there is nothing to cause the Government serious anxiety. Forty-seven millions of people in these Provinces are living peaceably under an ordered and progressive administration, and are probably more prosperous than their predecessors have ever been. The reformed Constitution has failed, it is true, to satisfy alike the Swarajists and the Liberals, and this constitutes some small cause for anxiety. The Governor in Council, in words quoted by the noble Lord who moved, has, it is true, placed it on record that, in his opinion, Dyarchy is a cumbrous, complex, confused system having no logical basis, rooted in compromise and defensible only as a transitional expedient. My Lords, I have said enough to make it plain that whatever other controversies may separate the noble Lord and myself this will neither be one of the most bitter nor the most protracted.

In the Punjab the working out of the scheme has driven the two main communities, Hindu and Mahomedan, into open dissension. This is an extremely interesting local development. It has unquestionably aggravated and rendered more bitter their communal differences, and it has further developed an acute antagonism between the urban and rural interests. There is not as yet, in the view of the Government, evidence of the existence of a thinking and selective electorate in the Districts capable of exercising its vote on considerations of policy. Here, too, the diarchical scheme has produced considerable anomalies, and it cannot, I think, be plausibly claimed that so far the Punjab afforded a suitable field for the introduction of such a divided responsibility. So far, Ministers willing to co-operate with the Executive have been found who have been supported by a Party which has not attempted to force them into an extreme position.

In Burma, the reforms were introduced two years later, as your Lordships may recall, than in the other Provinces in India. Less than seven per cent of the electorate voted at the only General Election held, and this was boycotted by the extremists. During the eighteen months in which the reforms have been in operation hardly any difficulties have been experienced, and hardly any defects discovered in the working of the Constitution.

I have almost finished this category, but I think your Lordships will agree that it is important. The Government of Bihar and Orissa said that one may search in vain for signs that three years of the reforms have educated the electorate to the meaning of an Election and the business of a Legislature. In many Districts the reports of the presiding officer declared that a large proportion of the voters did not know the name of the candidate for whom they voted, but had only been told the colour of his box. The Government includes amongst the causes which have contributed to the non-success of the reforms, the failure to create a Ministerial Party prepared to support the Ministers in carrying out a definite programme. The Council still remains divided into two parties, official and non-official. Where the issue is not an anti-Government one,

Ministers have their following in Council, but they cannot bring this to bear on political conditions and cannot therefore assist Government in times of difficulty. The Local Government adds that there is very little that can be done to smooth the working of Dyarchy, or to eliminate administrative imperfections.

The Central Provinces Government say that the value of the experiment in responsible government during the first Council was weakened, first, by the lack of connexion between the Members and their constituents; secondly, by the absence of any Party organization which would have made the responsibility of Ministers to the Council effective; and, thirdly, by lack of funds. The fair measure of success in the working of Dyarchy, which, in their claim, was achieved, was due partly to the moderation of the Council, and partly to the efforts made to work the scheme by the Members of Government and the permanent Services. Here also the Province is for the time being without Ministers, but I am not without hope that their appointment may shortly be found feasible.

In Assam the Governor in Council sums up the difficulty of working the Constitution as due, firstly, to the existence of a section of public men, considerable enough in numbers and ability to influence the Council, which is actively hostile to the present Constitution, and declines to work it; and, secondly, to the financial difficulties which have precluded the Local Government from undertaking any activities other than those of carrying on the essential administrative functions on pre-existing lines. The Ministers have thus no convincing answer to the cry of their opponents that the reforms have bestowed no benefits on the electors.

Enough has been said to satisfy my present purpose—which is to show that no short or dogmatic answer can be given to the question: Has the Constitution succeeded? It has neither altogether succeeded, nor has it altogether failed; and it must further be noted, by way of additional qualification, that where it has succeeded the price of success has been, at some stages and in some districts, a considerable inroad upon the diarchical principle. I have not thought it proper to discourage such tendencies, holding the view that the whole matter was experimental and afforded an opportunity to each Province to work out its constitutional salvation in its own way.

What, then, is it possible for me to say, at this stage, of the future? The wisdom of Parliament declared that, after the period of ten years, the Montagu-Chelmsford Constitution should be reviewed by a Royal Commission. It will undoubtedly require such revision; and it cannot be too plainly stated that everything will necessarily be thrown into the melting pot. Dyarchy itself is very obviously not a sacred principle. It must be decided by results. The conception was always doctrinaire and artificial. A great measure of success may justify it, where a smaller would not.

And now I apply myself more closely to a subject which has caused much speculation, and provoked at least an equal degree of agitation—the date of revision. To those who framed the reforms, ten years appeared to be a reasonable period for review; and in determining what was a reasonable period for the purposes of revision, it seems unnatural to suppose that Parliament presciently anticipated the very unreasonable campaign of non-cooperation which has done its best to wreck the

Constitution altogether. Even assuming co-operation, it was thought that a period of ten years would be required to afford the data for reliable conclusions and generalizations. But I do not hesitate to make clear my own view that it was not the intention of the Legislature to attempt to shackle succeeding Governments, if a spirit of cheerful and loyal co-operation was generally exhibited on the one hand, or if upon the other, grave and glaring defects disclosed themselves. It would, indeed, have been an assumption of omniscience alien to the Anglo-Saxon tradition for Parliament to assume so high a prophetic gift as to declare that in no circumstances should the date of the Commission be accelerated. In fact the door was never closed ; it is, on the contrary, open today ; but the condition is clear and precise. There will be—there can be—no re-consideration until we see everywhere among the responsible leaders of Indian thought evidence of a sincere and genuine desire to co-operate with us in making the best of the existing Constitution.

* * *

I pass at this point by a natural transition to the Muddiman Report, a subject to which the noble Lord [Lord Olivier] devoted a great part of his observations. The obligations of the Government must be admitted to the experienced men who contributed so much labour, and produced so competent a Report. We do not anticipate—for reasons which I have already made plain—that we shall be able, as the noble Lord desired, to accept the Report of the Minority at this stage. The problem of provincial autonomy has not indeed been adequately thought out by those who are today pressing it so strongly upon our attention. Provincial autonomy contemplates the complete transfer to all the Provinces of law and order ; and it would render necessary far-reaching changes in the Central Government of India which I have never yet seen closely analysed, and very rarely even cursorily examined. The noble Lord [Lord Olivier] certainly today attempted neither analysis nor examination.

It is rather on the lines recommended by the Majority that any immediate action must be taken. As I have already said, we must await the formal views of the Government of India on this matter ; but it will certainly be the desire of His Majesty's Government to go as far as possible in carrying out the proposals which the Government of India may make after discussion in the Legislative Assembly. Many of the recommendations of the Committee can be carried out by Regulation, and do not require an Act of Parliament. There need be no delay in making these changes. In those cases where legislation is required the matters will be appropriately dealt with as and when opportunity offers.

IV. Debate on the Report of the Reforms Enquiry Committee in the Indian Legislative Assembly on 7 September 1925[1]

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I beg to move the following Resolution :

'This Assembly recommends to the Governor-General in Council

[1] *The Legislative Assembly Debates* (1925), Official Report, vol. v, pt ii, pp. 848-68.

that he do accept the principle underlying the Majority Report of the Reforms Enquiry Committee and that he do give early consideration to the detailed recommendations therein contained for improvements in the machinery of Government.'

* * *

I desire in the first place to remind the House of the actual terms of reference to the Committee. They were as follows :

'(1) To inquire into the difficulties arising from or defects inherent in, the working of the Government of India Act and the rules thereunder in regard to the Central Government and the Governments of Governors' Provinces ; and

(2) To investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act,

(*a*) by action taken under the Act and the rules, or

(*b*) by such amendments of the Act as appear necessary to rectify any administrative imperfections.'

Now, obviously in one respect, the terms of this reference were very wide. They were unlimited as regards the first part of the inquiry into the difficulties arising from and defects inherent in the working of the Government of India Act. As to the second part, the remedial measures which the Committee might take, they were distinctly limited. They were limited to changes not affecting the structure of the Act. I mention this in *limine*, because the Committee has been much attacked in certain quarters for not doing what it was not authorized to do. It was not authorized to consider remedies beyond the scope of that which I have told the House. It is idle to attack Committees for not doing what they are not entitled to do.

* * *

Now, Sir, that report made numerous recommendations and the real difference in a few words between the Report of the Majority and the Report of the Minority is that the Majority say that the existing Constitution is capable of amendment and should be amended in the way that the report suggests. The Minority Report, while not hostile to many of the recommendations and perhaps even favourable to a few, takes the line that the present constitutional machinery needs structural changes beyond the scope of any remedy within the terms of reference.

* * *

Now, the important point, if I may say so with all deference to the Minority Report, is in the tail. It is in a few sentences at the end of their Report. Those sentences are of so important a character that I will ask the courtesy of the House to permit me to read them out. They conclude their Report as follows :

'We think that the Bihar Government has correctly summed up the position in the Provinces by saying that Dyarchy is working " creakily " and " minor remedies may cure a creak or two ". We have examined in detail the sections of the Government of India Act and the

rules made thereunder with a view to see how far " creaks " discovered can be " cured ". We are satisfied that this process, though it may lead to some improvement of the administrative machinery in some respects, will not produce any substantial results. We do not think that the suggested amendments if effected will afford " valuable training towards responsible government " or will provide any solution of the difficulties which we have discussed in our chapter on political conditions, or that they will strengthen the position of Provincial Governments in relation to their Legislatures or that of the Central Government in relation to the Assembly. The majority of our colleagues say that no alternative transitional system has been placed before us. We think that no such alternative transitional system can be devised which can satisfactorily solve the administrative or political difficulties which have been brought to our notice. To our mind, the proper question to ask is not whether any alternative transitional system can be devised but whether the Constitution should not be put on a permanent basis, with provisions for automatic progress in the future so as to secure stability in the Government and willing co-operation of the people. We can only express the hope that a serious attempt may be made at an early date to solve the question. That this attempt should be made—whether by the appointment of a Royal Commission with freer terms of reference and larger scope of inquiry than ours or by any other agency—is a question which we earnestly commend to the notice of the Government.'

Now, that is the pith of the Minority Report. In fact, as far as practical politics are concerned, it is a demand for a Royal Commission.

* * *

Then another important part of the scheme of the Government of India Act is contained in section 84A, which deals with the Statutory Commission. This section lays down that there must be an inquiry after ten years, at any rate not later than ten years. In other words, that inquiry must take place in 1929. On that point I should like to read to the House one or two words from the speech of the Secretary of State in the House of Lords. He said :

' Even assuming co-operation, it was thought that a period of ten years would be required to afford the data for reliable conclusions and generalizations. But I do not hesitate to make clear my own view that it was not the intention of the Legislature to attempt to shackle succeeding Governments, if a spirit of cheerful and loyal co-operation was generally exhibited on the one hand, or if upon the other grave and glaring defects disclosed themselves. It would, indeed, have been an assumption of omniscience alien to the Anglo-Saxon tradition for Parliament to assume so high a prophetic gift as to declare that in no circumstances should the date of the Commission be accelerated. In fact, the door was never closed. On the contrary it is open today. But the condition is clear.'

And to that condition I shall refer later on in my speech. You have been told by the Secretary of State that the British Government are not slaves of dates. I will read to the House what the Secretary of State says on that point :

' The door of acceleration is not open to menace; still less will it be

stormed by violence. But there never has been a moment since the Constitution was adopted in which the Government of India, acting in harmony with the Government at Home, has not been vigilantly and attentively considering the spirit in which the present reforms have been received in India. It has indeed been an imperative and urgent duty so to consider them. Wise men are not the slaves of dates ; rather are dates the servants of sagacious men.'

* * *

Pandit Motilal Nehru (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, I beg to move an amendment to the Resolution which has just been proposed by the Honourable the Home Member. That amendment runs as follows :

'That for the original Resolution the following be substituted :

'This Assembly while confirming and reiterating the demand contained in the Resolution passed by it on the 18th February 1924, recommends to the Governor-General in Council that he be pleased to take immediate steps to move His Majesty's Government to make a declaration in Parliament embodying the following fundamental changes in the present constitutional machinery and administration of India :

(*a*) The Revenues of India and all property vested in or arising or accruing from property or rights vested in His Majesty under the Government of India Act, 1858, or the present Act or received by the Secretary of State in Council under any of the said Acts shall hereafter vest in the Governor-General in Council for the purposes of the Government of India.

(*b*) The Governor-General in Council shall be responsible to the Indian Legislature and subject to such responsibility shall have the power to control the expenditure of the Revenues of India and make such grants and appropriations of any part of those Revenues or of any other property as is at present under the control or disposal of the Secretary of State for India in Council, save and except the following which shall for a fixed term of years remain under the control of the Secretary of State for India :

(i) Expenditure on the Military Services up to a fixed limit.

(ii) Expenditure classed as political and foreign.

(iii) The payment of all debts and liabilities hitherto lawfully contracted and incurred by the Secretary of State for India in Council on account of the Government of India.

(*c*) The Council of the Secretary of State for India shall be abolished and the position and functions of the Secretary of State for India shall be assimilated to those of the Secretary of State for the self-governing Dominions save as otherwise provided in clause (*b*).

(*d*) The Indian Army shall be nationalized within a reasonably short and definite period of time and Indians shall be admitted for service in all arms of defence and for that purpose, the Governor-General and the Commander-in-Chief shall be assisted by a Minister responsible to the Assembly.

(*e*) The Central and Provincial Legislatures shall consist entirely of members elected by constituencies formed on as wide a franchise as possible.

(*f*) The principle of responsibility to the Legislature shall be introduced in all branches of the administration of the Central Government subject to transitional reservations and residuary powers in the Governor-General in respect of the control of military and foreign and political affairs for a fixed term of years :

Provided that during the said fixed term the proposals of the Governor-General in Council for the appropriation of any revenues or moneys for military or other expenditure classified as ' Defence ' shall be submitted to the vote of the Legislature ; but that the Governor-General in Council shall have power, notwithstanding the vote of the Assembly, to appropriate up to a fixed maximum any sum he may consider necessary for such expenditure and in the event of a war to authorize such expenditure as may be considered necessary exceeding the maximum so fixed.

(*g*) The present system of Dyarchy in the Provinces shall be abolished and replaced by unitary and autonomous responsible Governments subject to the general control and residuary powers of the Central Government in inter-provincial and all-India matters.

(*h*) The Indian Legislature shall, after the expiry of the fixed term of years referred to in clauses (*b*) and (*f*) have full powers to make such amendments in the Constitution of India from time to time as may appear to be necessary or desirable.

' This Assembly further recommends to the Governor-General in Council that necessary steps be taken :

(*a*) to constitute in consultation with the Legislative Assembly a convention, round table conference or other suitable agency adequately representative of all Indian, European and Anglo-Indian interests to frame with due regard to the interests of Minorities a detailed scheme based on the above principles, after making such inquiry as may be necessary in this behalf ;

(*b*) to place the said scheme for approval before the Legislative Assembly and submit the same to the British Parliament to be embodied in a Statute.'

* * *

Now, the amendment which I have placed before the House will, I think, clarify the issue. It is not merely a question of time. It is a question of substance as to what this Royal Commission or round table conference or convention or whatever agency may be employed is actually going to do. Is it simply to come and begin at the beginning as is laid down in section 84A of the Government of India Act ? Is it to go into questions like these : What is the state of education in India ? What progress have representative institutions made in India ? Whether these people deserve any further progress or whether it is necessary to send

them down a form or two to learn their lessons better and come better prepared for another Commission ten years later ? Now, that is the sort of thing which we are objecting to. We say we are absolutely fit for self-government, as fit as you are yourself in your own Island. This is what we say. Here we are occupying that position and you tell us as you would tell schoolboys : Be good boys and you will be promoted to a higher form.

PART II: TOWARDS THE NEW CONSTITUTION 1921-37

I. The Indian Statutory Commission, 1927-30

(1) *Statement by Mr Stanley Baldwin, Prime Minister, announcing the Appointment of the Commission, 8 November 1927*[1]

As the House will remember, one of the provisions contained in the Indian Reforms Act of 1919 required ' at the expiration of 10 years after the passing ' of that Act, the appointment, with the concurrence of both Houses of Parliament, of persons to be a Commission to inquire into the working of the Indian Constitution and to consider the desirability of establishing, extending, modifying or restricting the degree of responsible government then existing there. The Government have decided, for various reasons which I need not now specify, that it is desirable to anticipate the date (December 1929) contemplated by the Act and to appoint this most important Royal Commission forthwith.

Balancing the various considerations and endeavouring to give due weight to each, His Majesty's Government have decided upon the following procedure :

(*a*) They propose to recommend to His Majesty that the Statutory Commission should be composed as follows :

The right hon. and learned Member for Spen Valley (Sir John Simon) (Chairman) ;
Lord Burnham ;
Lord Strathcona and Mount Royal ;
The hon. Member for Finchley (Mr Cadogan) ;
The right hon. Member for Ince (Mr Stephen Walsh) ;
The right hon. Gentleman the Minister of Mines (Colonel Lane Fox) ;
The hon. Member for Limehouse (Mr Attlee)

These names will be submitted to both Houses in Resolutions.

(*b*) His Majesty's Government cannot, of course, dictate to the Commission what procedure it shall follow, but they are of opinion that its task in taking evidence would be greatly facilitated if it were to invite the Central Indian Legislature to appoint a Joint Select Committee, chosen from its elected and nominated unofficial Members, which would draw up its views and proposals in writing and lay them before the Commission for examination in such manner as the latter may decide. This Committee might remain in being for any consultation which the Commission might desire at subsequent stages of the inquiry. It should be clearly understood that the purpose of this suggestion is not to limit the discretion of the Commission in hearing other witnesses.

(*c*) His Majesty's Government suggest that a similar procedure should be adopted with the Provincial Legislatures.

[1] *Parliamentary Debates : Commons*, vol. 210 (1927), pp. 19-21.

(*d*) The vast area to be covered may make it desirable that the task of taking evidence on the more purely administrative questions involved should be undertaken by some other authority which would be in the closest touch with the Commission. His Majesty's Government suggest that the Commission on arrival in India should consider and decide by what machinery this work may most appropriately be discharged. This will not, of course, debar the Commission from the advantage of taking evidence itself upon these subjects to whatever extent it may think desirable.

(*e*) When the Commission has reported and its Report has been examined by the Government of India and His Majesty's Government it will be the duty of the latter to present proposals to Parliament. But it is not the intention of His Majesty's Government to ask Parliament to adopt these proposals without first giving a full opportunity for Indian opinion of different schools to contribute its view upon them. And to this end it is intended to invite Parliament to refer these proposals to consideration by a Joint Committee of both Houses and to facilitate the presentation to that Committee both of the views of the Indian Central Legislature by delegations, who will be invited to attend and confer with the Joint Committee, and also of the views of any other bodies whom the Joint Parliamentary Committee may desire to consult.

The ante-dating of the Commission involves an amendment of the Act and a Bill to this end will be introduced at once.

(2) *His Excellency the Viceroy, Lord Irwin, on the Composition of the Commission, 8 November 1927*[1]

The question of what should be the composition of the Commission is one to which the answer must inevitably be greatly influenced by the nature of the task which Parliament has to perform in the light of its advice. In order that the decision at which His Majesty's Government have arrived may be fully understood, it is necessary to state in a few words what they conceive that task to be. If it were simply the drawing up of a Constitution which Parliament, which must in any circumstances be the final arbiter, would impose on India from without, the problem would be comparatively simple. But that is not how His Majesty's Government conceive it. The preamble to the Act of 1919 recognized, in effect, that with the development of Indian political thought during the last generation, legitimate aspirations towards responsible government had been formed of which account must be taken. His Majesty's present Government desire no less to take account of those aspirations, and their hope is to lay before Parliament—after the investigation into facts prescribed by the Act—conclusions which shall, so far as is practicable, have been reached by agreement with all parties concerned. It is with this object steadily in view that His Majesty's Government have considered both the composition of the Commission and the procedure to be followed in dealing with its Report.

It would be generally agreed that what is required is a Commission which would be unbiased and competent to present an accurate picture of the facts to Parliament, but it must also be a body on whose recom-

[1] Cmd. 2986 (1927).

mendations Parliament should be found willing to take action which a study of these facts may indicate to be appropriate.

To fulfil the first requirement it would follow that the Commission should be such as may approach its task with sympathy and a real desire to assist India to the utmost of its power, but with a mind free from preconceived conclusions on either side. It is, however, open to doubt whether a Commission constituted so as to include a substantial proportion of Indian members and, as it rightly would, British official members also, would be thought to satisfy the first condition of reaching conclusions unaffected by any process of *a priori* reasoning. On the one hand, it might be felt that the desire, natural and legitimate, of the Indian members to see India a self-governing nation, could hardly fail to colour their judgement of her present capacity to sustain the role ; on the other hand, there are those who might hold that British official members would be less than human if their judgement were not in some degree affected by long and close contact with the questions to which they would now be invited to apply impartial minds.

But even after such a Commission had written its report Parliament would inevitably approach consideration of it with some element of mental reservation due to an instinctive feeling that the advice in more than one case represented views to which the holder was previously committed. It would move uncertainly among conclusions the exact value of which, owing to unfamiliarity with the minds of their framers, it would feel unable to appreciate.

We should, however, make a great mistake if we supposed that these matters were purely constitutional or could be treated merely as the subject of judicial investigation. Indian opinion has a clear title to ask that in the elaboration of a new instrument of government their solution of the problem or their judgement on other solutions which may be proposed should be made an integral factor in the examination of the question and be given due weight in the ultimate decision. It is, therefore, essential to find means by which Indians may be made parties to deliberations so nearly affecting the future of their country.

(3) *Boycott of the Commission*

(A) *The All-India Leaders' Manifesto, 16 November 1927*[1]

We have given the most anxious consideration to the announcement made in the Houses of Parliament[2] and the statement of His Excellency the Viceroy[3] and the appeal of the Premier regarding the constitution and programme of the Statutory Commission. We have come to the deliberate conclusion that the exclusion of Indians from the Commission is fundamentally wrong, and that the proposals about Committees of Legislatures being allowed to submit their views to the Commission, and later to confer with the Joint Parliamentary Committee, are wholly inadequate to meet the requirements of the case. The underlying principle of the scheme, that Indians are to have no authoritative voice

[1] *The Indian Annual Register* (1927), vol. II, pp. 98-9. The manifesto was signed by Sir Tej Bahadur Sapru, Dr Mrs Annie Besant, Mr M. A. Jinnah, Mr Yakub Hasan and other leaders. [Ed.]

[2] See pp. 205-6 above. [Ed.]

[3] See pp. 206-7 above. [Ed.]

either in the collection of proper materials and evidence or in the taking of decisions by way of recommendations of the Commission to Parliament, is of such a character that India cannot with any self-respect, acquiesce in it. Unless a Commission on which British and Indian statesmen are invited to sit on equal terms is set up we cannot conscientiously take any part or share in the work of the Commission as at present constituted.

(B) *Statement by Mr S. Srinivasa Iyengar, President of the Indian National Congress, 10 November 1927*[1]

The reasons for the boycott are of the most cogent description. Indian people, as the Congress has rightly claimed, are entitled to determine their own Constitution either by a Round Table Conference or by a convention Parliament. That claim has been definitely negatived by the appointment of this Commission. That is the most important reason not only from the Congress point of view but from the point of view, I am certain, of all the Indian political parties which concurred in the two resolutions of the Legislative Assembly of 18th February 1924[2] and 8th September 1925. That of course is the fundamental objection. The second reason is that we cannot be parties to an inquiry into our fitness for Swaraj or for any measure of responsible government. Our claim for Swaraj is there and it is only a question of negotiations and settlement between the British Government and the Indian people.[3] The third reason is undoubtedly the affront to Indian self-respect involved in the deliberate exclusion of Indians from the Commission. While the Congress point of view is undoubtedly that any Commission, whether mixed or all-British, is open to the two fundamental objections already stated, neither Congressmen nor others can ignore the insult offered to Indians generally when they are roundly told that they cannot be regarded as unbiased and competent to present an accurate picture of facts to the Parliament. A majority of really representative and unofficial Indians on the Commission would still be open to the fundamental objections from the Congress point of view but would be free from insulting implications. Nor do I understand how select committees consisting of Indians will become straightway unbiased and competent to make their judgement ' an integral factor in the examination of the question and be given due weight '. The fourth reason for the boycott is that the present time is considered by the British Government as most suitable. From their point of view it would help them to revise the Constitution so as to

[1] *The Indian Annual Register* (1927), vol. II, pp. 101-2.

[2] See footnote [1], p. 220 below. [Ed.]

[3] This view was totally opposed to the stand taken by His Majesty's Government. Lord Birkenhead, Secretary of State for India, speaking in the House of Lords on 24 November 1927, said : ' But let it be plainly said, and it cannot be too plainly said, that Parliament cannot and will not repudiate its own duties, its own responsibility in this matter. If anybody seriously supposes, either here or in India, that we are mechanically to accept a Constitution without our own primary and ultimate responsibility for judging upon it, they have no contact with the realities of the actual situation. We therefore form the clear view that this Commission must be a Parliamentary Commission.'—*The Indian Annual Register* (1927), vol. II, p. 70. [Ed.]

make it even more convenient than the existing Act. When a Commission was wanted the British Government would not give it, but they would impose upon the Indian people a Commission which is not wanted and when it is not wanted. Lord Birkenhead now introduces a Bill to amend Section 84A of the Government of India Act so as to appoint the Commission before the expiry of the ten years. Could he not introduce a Bill either to repeal that section altogether or to amend it so as to provide for a Round Table Conference or a Constituent Assembly ? The Government of India Act has been modified during the interval, on matters such as the Lee Commission[1] proposals and the enabling of Viceroys and Members of Government to take leave and go out of India temporarily. This very Section 84A dealing with this Statutory Commission is now sought to be modified on this important matter, the question of date. We are also told in the statement issued by His Excellency the Viceroy that the statute never professed to incorporate 'irrevocable decisions'. Why then should not Section 84A be replaced or suitably modified so as to accede to the demands of the Assembly which were passed by overwhelming majorities and the demand of the Congress and the country as a whole ? The last reason for the boycott is the spirit which lies behind these proposals. There is no change of heart except in the direction of greater hardening.

(C) *The Presidential Address of the All-India Liberal Federation by Sir Tej Bahadur Sapru, 27 December 1927*[2]

'It is our purpose', said Lord Birkenhead, 'that the Commission, when it visits India, should establish contact with the Committee appointed for that purpose by the Central Legislature.' . . .

Stripped of all superfluous verbiage it comes to nothing more than this, that the Central Legislature will be asked to appoint a Committee to prepare their own proposals and to place them before the Commission. Hitherto in the passages that I have quoted above[3] there is not even an indication that these Committees will take part in the examination of witnesses or documents or that they will be at liberty even to submit any report. They are to place their proposals and try to persuade the Commission to accept them which will analyse and criticize those proposals and in the end may accept or reject them. They cannot vote at any stage of their contact with the Commission. They are simply there to plead, to persuade, to urge and then to withdraw, and yet we are told that these Committees will be the colleagues of the Commission. If an advocate can be a colleague of a Judge, if a person who is put on his trial can be the colleague of a jury, then no doubt those Committees will be the colleagues of the Commission.

* * *

There is yet another palliative provided and we are asked to reconcile ourselves to this scheme by remembering that at the next stage 'after the Commission has presented its Report, the proposals of the Govern-

[1] Royal Commission on the Superior Civil Services in India, 1924. [Ed.]
[2] *The Indian Annual Register* (1927), vol. II, pp. 425-9.
[3] Not extracted. [Ed.]

ment on it will be sent, according to precedent, to both the Houses of Parliament '. I have a distinct recollection of the work of the Joint Select Committee in the year 1919. I was examined by it and so were many other Indian friends of mine. Constitutionally the creation of such a committee is perfectly understandable and defensible, but constitutionally again I ask, how is it possible for any Indian delegation, whether of the Committees of the Indian Legislatures or any other class of persons, to claim equality with the Select Committee of Parliament or to share responsibility with that Select Committee ? Let not, therefore, the Indian position be misunderstood. At any rate the position of our party is and has been that while constitutionally the ultimate decision lies with Parliament there is nothing in the Act to prevent Parliament from taking in Indians into the Statutory Commission and giving them the right of participating in the recommendations of that Commission. A true spirit of co-operation and broad-minded statesmanship required that Indians should have been taken into the Commission and the creation of this cumbrous machinery of Committees with all bombastic claims for its equality can be no substitute either for a mixed Commission or for a real Round Table Conference.

* * *

I do not think a worse challenge has been thrown out ever before to Indian nationalism, and notwithstanding the profuse assurances in Mr Baldwin's speech and the yet more profuse assurances in Mr Ramsay MacDonald's speech, Indian nationalists of the Moderate school have been compelled to ask if the only way of recognizing the spirit of co-operation is by telling Indians that their lot is to be none other than that of petitioners, that they cannot be trusted to participate in the responsibility of making recommendations to Parliament for the future of their country, and that all that they may aspire to is to put their proposals before the Commission which may accept them or reject them, and again to repeat the same process of persuasion, argument and discussion before the Joint Committee of Parliament. Now, if this is what is meant by co-operation, if this is the new idea of equality of status on which we are to be fed, if our patriotism is a prejudice and if the patriotism of the seven Members of Parliament is to be treated as impartial justice, then we Liberals feel justified in telling the Government here and in England, ' You may do anything you like in the assertion of your right as supreme power, but we are not going to acquiesce in this method of dealing with us. Neither our self-respect nor our sense of duty to our country can permit us to go near the Commission.'

(4) *Proposals made by the Indian Statutory Commission regarding the future Constitution of India, 27 May 1930*[1]

Outline of Provincial Changes

364. In the Provinces, the main consequences of adopting our proposals would be as follows :

The boundary now set up between departments of which Indian

[1] *Indian Statutory Commission Report*, 1930, vol. II, pars. 364-8.

Ministers may take charge and departments from which they are excluded will be removed, and thus Dyarchy will terminate.

The conduct of provincial administration as a whole will rest with a Provincial Cabinet, the Members of which will be chosen by the Governor. These Ministers, whether elected Members of the Legislature or not, will have joint responsibility for action and policy. The constitution of the Provincial Cabinet will be elastic and, where and when the Governor considers it necessary, it will contain an official element.

The powers of the Governor for certain essential purposes, such as the protection of Minorities, and of the Civil Service, will be defined, and will be exercised within the limits and under the conditions we have described.

Full powers of intervention in the event of a breakdown will remain in the hands of the Governor, subject to the direction of the Governor-General.

The Provincial Legislatures will be based upon a widened franchise —the extension we propose would treble the electorate and would include the admission of a larger number of women voters.

Certain important Minorities will be adequately protected by the continuance of communal electorates unless and until agreement can be reached upon a better method.

The Depressed Classes will get representation by reservation of seats.

The Legislatures will be enlarged, and the constituencies reduced to a more manageable size. The Provincial Councils instead of being, as at present, purely legislative bodies, will acquire certain powers of recasting their own representative system, so that each Province may advance to self-government on lines which are found to be best suited for its individual needs, subject always to securing that the vote of the majority shall not introduce constitutional changes which would prejudice minority rights.

The Provinces will be provided with enlarged financial resources.

As for Provincial areas, the question whether some redistribution is desirable will at once be taken up ; such cases as those of Sind and the Oriya-speaking peoples will be the first to be considered.

Burma, which is admittedly not a natural part of British India, will be separated forthwith. Provision must be made without delay for framing its future Constitution.

The administered areas of the North-West Frontier Province will now receive an advance in constitutional status represented by the creation of a Local Legislature, with powers which we have described. Both it and Baluchistan will acquire the right to representation at the Centre.

The complicated and interlacing systems of administration of the Backward Tracts will be revised, and such parts of these as remain Excluded Areas will come under the charge of the central administration.

Modifications at the Centre

365. We now pass to the Centre.

The Legislative Assembly, which should be called the ' Federal Assembly ', will be reconstituted on the basis of the representation of the Provinces and other areas in British India according to population.

Members representing Governors' Provinces will be elected by the Provincial Councils by the method of proportional representation, which will ensure that members belonging to minority communities will be included in sufficient numbers in the Federal Assembly. Members will be returned from the North-West Frontier Province and other areas outside the Governors' Provinces by methods appropriate to each case. The official members of the Federal Assembly will consist of such members of the Governor-General's Council as sit in the Lower House, together with twelve other nominated officials.

The Council of State will continue with its existing functions as a body of elected and nominated Members chosen in the same proportions as at present. Its Members, who must have high qualifications, will, so far as they are elected, be chosen by indirect election carried out by Provincial Second Chambers if such bodies are constituted, or, failing this, by the Provincial Councils.

The existing legislative and financial powers of the two Chambers of the Central Legislature will remain as at present, but the Federal Assembly will also have the special function of voting certain indirect taxes, collected by a central agency, the net proceeds of which will fall into a Provincial Fund for the purpose of being distributed amongst the different units represented in the Federal Assembly.

The Central Executive will continue to be the Governor-General in Council, but the Governor-General will henceforward be the authority who will select and appoint his Executive Councillors. Existing qualifications will remain, but will be laid down in statutory rules made under the new Government of India Act, so that when occasion arises to modify these conditions hereafter this may be done without passing a new Act of Parliament. But any modification in the statutory rules made for this purpose would require to be laid before both Houses of Parliament and the approval of both Houses expressed by resolution.

It is proposed that among the members of the Governor-General's Council should be one whose primary function it would be to lead the Federal Assembly. . . We propose that the Commander-in-Chief should no longer be a member of it, or of the Central Legislature.

The Army

366. We have suggested for consideration a method[1] by which, if agreement could be reached, the obstacle which the composition and functions of the Army in India present to the more rapid development of responsible government might be removed through treating the defence of India as a matter which should fall within the responsibilities of the Governor-General, advised by the Commander-in-Chief, as representing the Imperial authorities, instead of being part of the responsibilities of the Government of India in relation to the Central Legislature.

The Civil Services, High Courts, India Office

367. As regards the Civil Services of India, the Security Services must continue to be recruited as all-India Services by the Secretary of State, and their existing rights must be maintained. These Security

[1] The suggestions put forward by the Commission are discussed in the *Indian Statutory Commission Report*, vol. II, pt v. [Ed.]

Services include the Indian Civil Service and the Indian Police Service. It is a matter for consideration whether the Irrigation Service and the Forest Service should not be similarly recruited. The privilege of premature retirement will be extended.

The rates of Indianization laid down by the Lee Commission for the Security Services will be maintained.

In addition to the existing Public Service Commission, we intend that there should be established by Statute similar bodies covering the Provincial and Subordinate Services in all the Provinces.

The High Courts will be centralized, and the expenses of the High Courts will become a Central charge.

As regards the India Office, the Governor-General in Council will remain in constitutional theory under the superintendence, direction and control of the Secretary of State, and the extent to which this control is relaxed or falls into desuetude will depend upon future practice, and cannot be laid down in the Statute.

Apart from the Secretary of State's authority over the Governor-General in Council, he will exercise no control over Provincial Governments, save in so far as he does so in connexion with the exercise of special powers vested in the Governor.

The functions and composition of the Council of India will be modified. Its size will be reduced, and the majority of its Members should have the qualification of more recent Indian experience than is required at present. The Council will exist primarily as an advisory body, but independent powers will continue for (1) the control of Service conditions, and (2) the control of non-votable Indian expenditure.

The Indian States

368. Lastly, for the purpose of promoting the closer association with British India of the Indian States in matters of common concern for India as a whole, we propose that the new Act should provide that it shall be lawful for the Crown to create a Council for Greater India,[1] containing both representatives of the States and members representing British India. This Council would have consultative and deliberative functions in regard to a scheduled list of ' matters of common concern ', together with such other subjects of common concern as the Viceroy from time to time certifies as suitable for consideration by the Council. . . . We put forward the proposals as designed to make a beginning in the process which may lead to the Federation of Greater India.

(5) *The Indian Statutory Commission on the Ideal of Federation for all India, 27 May 1930*[2]

21. The ultimate Constitution of India must be federal, for it is only in a federal Constitution that units differing so widely in constitution as the Provinces and the States can be brought together while retaining internal autonomy. This is recognized in the Montagu-Chelmsford Report : ' Granted the announcement of August 20th, we cannot at the present time envisage its complete fulfilment in any form other than that

[1] See pp. 216-19 below. [Ed.]
[2] *Indian Statutory Commission Report*, 1930, vol. II, pars. 21-32.

of a congeries of self-governing Indian Provinces associated for certain purposes under a responsible government of India ; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define.'[1] This statement is as true today as when it was written, but opinion has, we believe, advanced considerably along these lines during the intervening period. That some of the leading Indian Princes envisage some such polity in the future is shown by the pronouncement made on 19th December, 1929, by H.H. the Maharaja of Bikaner to the Legislative Assembly of his State. ' I look forward to the day when a United India will be enjoying Dominion Status under the ægis of the King-Emperor and the Princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal Provinces of British India.' However distant that day may be, we desire in our proposals to do nothing to hinder but everything to help its arrival, for already there are emerging problems that can only be settled satisfactorily by co-operation between British India and the States.

* * *

22. . . . Whatever may be the ultimate decision, it seems to us that the reorganization of British India on a federal basis will prepare the way for it.

* * *

The Completion of Devolution

27. The authors of the Montagu-Chelmsford Report stated that the process on which they were engaged was not that of federalizing India, but the antecedent one of breaking up the old structure before building the new. They were giving independent life to the organisms which would in future form the members of the new body. We desire to complete this preliminary process and at the same time to lay down the broad lines of the future federation. The scheme which we recommend completes the process of devolution. It aims at giving the maximum of provincial autonomy consistent with the common interest of India as a whole. This means the abolition of Dyarchy, for it was of the essence of this system that, while certain departments were transferred to the control of Ministers, the Reserved side of the administration was still carried on under the superintendence, direction and control of the Central Government. Devolution was, therefore, incomplete. It is our intention that in future each Province should be as far as possible mistress in her own house. Thus independent life will be given to the Provinces which will form the nucleus of the new federal structure.

* * *

Reconstitution of the Central Legislature

30. . . . If the ideal to be aimed at is a federation to which the Indian States will one day adhere, the process of evolution in British

[1] *Montagu-Chelmsford Report*, par. 120.

India towards provincial autonomy in matters of internal government must be thoroughly carried out. The union of constituents such as the Indian States with the Provinces of India, the former autocratic and the latter democratic, necessarily involves giving the greatest possible internal freedom to the federal units. It is, we think, abundantly clear that it is only on such terms that there could be hope of achieving the unity of Greater India. The Central Government becomes on such a theory an association of units formed mainly for the purpose of performing certain functions on behalf of all. But while we conceive of the central body of the federation more as an instrument for doing certain work in the common interests of all its members than as an overriding power, provincial autonomy does not mean that the Central Government would not be entitled to call for assistance and co-operation in matters vital to the whole. Those who desire to secure the end of federation must be willing to contemplate the means by which it may be brought about. And the only means which are practicable involve a substantial change in the present constitution of the Central Legislature. It appears to us that this body must be composed henceforward on a strictly federal basis, that is to say, it should be the units of ultimate federation rather than popular constituencies that should be represented in it. Direct election to the Central Legislature . . . involves constituencies of such size as make it impossible to secure reality of representation. Our examination of the problems of public finance in India, and the Report made to us by our Financial Assessor, lead us to propose a scheme which will enable the Provinces to secure much needed additional revenue, by methods which require that the Provinces should feel themselves to be represented at the Centre. Various arguments, therefore, converge in support of the view that reconstruction at the Centre should not closely follow the lines already pursued. All that it is necessary to emphasize here is that the new constitution which we propose for the Central Government is something differing from Parliament, and cannot, therefore, be judged on the assumptions that might be made in considering the needs of a unitary state.

The Road to Federation

31. Now how much of the ultimate object in view can be expressed in statutory form at the present time ? The conception of the evolution of India into a federation of self-governing units has certain important effects on the degree to which changes in the structure of the Central Government can be made now. We have already indicated the need for a reconsideration of the boundaries of the present Provinces, and we have expressed our hopes that at some future time the Indian States may adhere to an all-India Federation. We are therefore faced with the situation that we are trying to federate elements, some of which have not been finally delimited, while others have yet to express their willingness to enter. But even if we were to ignore the Indian States and were to rest content with the Provinces as at present constituted, the necessary conditions for bringing a fully federal Constitution into being are not yet present. The Provinces must first become political entities. Even when our proposals for the constitution of the Governors' Provinces have been embodied in a Statute, the process is not completed. The

Provincial Constitution only begins to exist as a living thing when the forces which operate it are at work and provincial opinion gives it inspiration and direction.

32. Every federal union means the coming together of constituent elements which, while preserving their identities, look to the Centre to deal with matters common to all. Thus the nature of the constituents themselves has a great influence on the form which the federation takes. It is a difficult task to combine the process of devolution with that of integration on a new basis.

Experience shows that federation has generally come about some time after the federating units have become politically self-conscious. In Australia and South Africa, for example, unity at a common centre was only brought about a substantial time after each of the constituent units, or at any rate most of them, had achieved self-government. The same thing is, in substance, true about the Dominion of Canada. The very name of the United States illustrates the same sequence. India, which presents so many complications on other grounds, is also unique in this that a Central Government is being evolved at the same time as the Provinces are growing to their full stature. But this does not alter the significance of the lesson to be learnt from these other instances.

Thus an attempt to devise now a detailed and final Constitution for the Centre would be to ignore the fact that its ultimate form must depend on the action of its constituent parts. We can but provide the conditions for its future realization.

(6) *The Indian Statutory Commission on the Establishment of the Council of Greater India, 27 May 1930*[1]

234. Federations come about only when the units to be federated are ready for the process, and we are far from supposing that the Federation of Greater India can be artificially hastened, or that, when it comes, it will spring into being at a bound. The practical question is whether at the present stage there are any definite but modest steps which might be taken by way of tentative advance. The creation of the Chamber of Princes . . . was designed to put an end to the period when the Crown was only able to consult each State separately and individually. Notwithstanding that some of the most important States have held aloof from the Chamber, it has provided a valuable means for joint consultation with the others. While making due allowance for the limited functions of that body, we believe that its existence during the past nine years, and especially the work of its Standing Committee, have prepared the way for some further advance. But the Chamber is not in itself a federal organ, for it is exclusively concerned with Indian problems looked at from the side of the Indian States. Its only contact with British India is through its President, the Viceroy, and the Viceroy in this connexion is the representative of the British Crown rather than the head of the Indian Government. What is now needed is some organ, however rudimentary, which will for some purposes, however limited, address itself to the treatment of matters which are of common concern to the whole of Greater India, not from the side of the Indian States alone, nor

[1] *Indian Statutory Commission Report*, 1930, vol. II, pars 234-7.

solely from the side of British India, but from both. Even if the new step is a very small one, it would be of profound significance, should it satisfy this condition. We hope that it may be found possible to make a beginning, and we have three concrete proposals to put forward.

Three Concrete Proposals

235. First, we should like to see a serious and business-like effort now made to draw up a list of those ' matters of common concern ', which are so often referred to, but have seldom been defined, save by the use of one or two obvious illustrations. The making of such a list, in consultation and by agreement, would in itself do much to apply strict tests to a conception which cannot be usefully embraced without adequate definition. It may be that the first list will not be exhaustive, but we are going to propose a method by which further topics could be added to it under suitable safeguards from time to time. Secondly, we should like to see included in the Preamble to any new Government of India Act a recital which would put on record the desire to develop that closer association between the Indian States and British India which is the motive force behind all discussions of an eventual Federal Union. It would, of course, be absolutely necessary to make plain in the Preamble (what is at all times acknowledged and understood) that any such association can only come about if and so far as the Indian States desire that it should. And thirdly, we wish to suggest that steps should be taken now to devise the creation and setting up of a standing consultative body containing representatives both from British India and the Indian States, with powers of discussion and of reaching and recording deliberative results on topics falling within the list of matters of common concern. It is clear that the machinery for joint consultation must precede anything in the nature of executive or legislative action on federal lines. The Butler Committee, in the second part of its Report, has recommended the setting up of special tribunals for adjusting a number of important matters which affect the Indian States and British India alike. We are not seeking for a moment to go over ground which that Committee has covered ; but the question is whether the time may not have arrived to set up some permanent machinery of consultation.

The Preamble and the List of Matters of Common Concern

236. The details of this sketch may be filled in by other hands in various ways. In order that what we have in mind may be more clearly apprehended, we propose in this paragraph to develop with more precision, though only as a possible illustration, our ideas of what might be attempted. The Preamble of which we have spoken might contain a recital to the effect that it is desirable to make provision whereby such Indian States as so desire may be associated with British India in the consideration of matters of common concern between the Indian States and British India. The operative clause of the Act might provide that it should be lawful for the Crown to create by proclamation a Council for Greater India for the purpose of consulting on matters of common concern to British India and the Indian States. There would be a specific provision inserted that it was beyond the competence of the Council for

Greater India to call in question or to discuss (*a*) the internal administration of an Indian State, or of British India, or of any part of it; and (*b*) the existence and exercise by the British Crown of its functions as Paramount Power. Matters of common concern would be listed in a schedule to the Act. The Council would consist of, say, 30 members, of which 10 would be representatives of the States. The majority of the States' representatives would be nominated by the Chamber of Princes; the Viceroy might complete the list by invitation, so as to provide for the representation of those Indian States which do not form part of the Chamber. On the side of British India some of the members would be drawn from the Central Legislature by the use of the transferable vote; others would be nominated by the Viceroy. The Political Secretary would be a member *ex officio*. The Council would be presided over by the Viceroy, or in his absence by one of a Committee of four Vice-Presidents, two from the States' side and two out of the contingent from British India. This Committee would assist the President to decide the agenda for meetings of the Council. There would be a Registrar at the head of any necessary secretariat. The various members of the Council would be chosen for a period of, say, five years; for the effective working of the Council and the creation of a tradition as to the parts it plays cannot be secured if its personnel is constantly changing. As regards the scheduled list of matters of common concern, we think that the best plan would be to mention certain topics specifically, and to add at the end of this specific list the phrase 'together with such other subjects of common concern as the Viceroy from time to time certifies as suitable for consideration by the Council'. This provides a power of expansion, and at the same time keeps the list of matters dealt with under proper control. The specific list might include:

(1) The Customs tariff of British India.
(2) The Salt tax.
(3) Any other form of central taxation affecting the Indian States.
(4) Railway policy.
(5) Air communications.
(6) Trunk roads.
(7) Posts and telegraphs.
(8) Wireless.
(9) Currency and coinage.
(10) Commerce, banking, and insurance, so far as the matters raised affect both the States and British India.
(11) Opium policy.
(12) Indians overseas.
(13) Matters arising in connexion with India's membership of, and participation in, the League of Nations.

The Council for Greater India

237. We are well aware that what we have written raises many questions on which there may be points of difficulty and controversy. We do not claim to have worked out every detail. Our object is to present a plan which is sufficiently definite to be the subject of discussion, elaboration and amendment; and for this purpose we proceed to give some

description of how in actual working such a Council might function. Its discussions would in some cases be in the nature of general debates, and in other cases would refer to concrete proposals. The Council would provide an opportunity for taking the Indian States into consultation about changes in the tariff. Even if contemplated changes could not be disclosed before the Finance Member of the Government of India announces, in presenting his Finance Bill, that they are contemplated, it would still be possible for the Council to meet and discuss the changes proposed before any changes are made. It might request the Viceroy, as its President, to invite the Finance Member to attend the Council and give a further exposition of his plans. The views of the Financial Adviser of an important State might by a similar process be laid before it, even though he is not a member of the Council. The views formed by the Council would be recorded in a Report, which would include the record of any dissenting Minority, and this Report should be furnished to the Central Legislature as well as to the Chamber of Princes. We are far from thinking that division of opinion would always follow the line that separates British India from the States. On the contrary, we believe that it will be found that there will be occasions when common interest and sympathy will cut across these lines. We think that some machinery might be devised by which, at any rate in important cases, these views might be expounded to the Central Legislature and to the Chamber of Princes, much in the way in which a *Rapporteur* acts at the League of Nations. A similar course might be followed with regard to other specific proposals which are before the Central Legislature, whether as Government measures or as Private Bills, in so far as they deal with topics mentioned in the schedule of matters of common concern. It may well be, however, that an even more important part of the work of the Council would be concerned with questions of general policy falling within the schedule of matters of common concern. There will be cases where the Council would appoint a Committee of its own body to sit with a Committee of the Central Legislature for discussing some of these general matters in considerable detail. There will be other cases in which the Council would appoint a Committee of its own body for investigating and reporting upon some aspect of the matters within its ambit. There should be a power to add experts for this purpose. The provision suggested above by which the Viceroy might add other matters of common concern to the list of specific subjects would enable an investigation to be undertaken by a Committee of the Council of the further steps which might hereafter be taken in developing federal relations.

The whole scheme for the Council, as we conceive it, is designed to make a beginning in the process which may one day lead to Indian Federation. What we are proposing is merely a throwing across the gap of the first strands which may in time mark the line of a solid and enduring bridge, and we feel convinced that the process must begin in organized consultation between the States and British India, both because such consultation is urgently needed in the interests of both, and because it will assuredly foster the sense of need for further developments, and bring more nearly within the range of realization other steps which are as yet too distant and too dim to be entered upon and described.

II. The Goal of Indian political Evolution : Dominion Status v. Complete Independence[1]

(1) *Sir Malcolm Hailey, Home Member to the Government of India, on the grant of full self-governing Dominion Status to India, 8 February 1924*[2]

The pronouncement of August 1917 spoke of ' the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India '. That is also the term used in the Preamble to the Act ; that is the term used in the Royal Warrant of Instructions which adds that ' thus will India be fitted to take her place among the other Dominions '. The term has its significance ; we know that it was deliberately chosen. The Congress and the League had asked the Imperial Government to proclaim its intention to confer self-government on India at an early date and the Cabinet chose the present term. The expression used in the Act is a term of precision, conveying that the Executive in India would be responsible to the Indian Legislature instead of to the British Parliament. If you analyse the term ' full Dominion Self-Government ', you will see that it is of somewhat wider extent, conveying that not only will the Executive be responsible to the Legislature, but the Legislature will in itself have the full powers which are typical of the modern Dominion. I say there is some difference of substance, because responsible government is not necessarily incompatible with a Legislature with limited or restricted powers. It may be that full Dominion self-government is the logical outcome of responsible government, nay, it may be the inevitable and historical development of responsible government, but it is a further and a final step.

* * *

We maintain that the objective of the Government of India Act is as defined in that Act, namely, responsible government. We do not deny that full Dominion Status may be the corollary of responsible government. For the present we must limit ourselves to the objective of the Act.

(2) *Report of the All-Parties Conference Committee on the constitutional Status of India, 10 August 1928*[3]

Our terms of reference do not call upon us to make out a case for responsible government for the obvious reason that so far as the Conference was concerned there was no necessity for doing so. There certainly are those among the parties represented in the Conference who

[1] For the historic statement of Lord Irwin on 31 October 1929 that Dominion Status was the goal of Indian political evolution and the resolution of the Indian National Congress laying down complete independence as the goal of national endeavour, see pp. 225-7 and 227-8 respectively below. [Ed.]

[2] Legislative Assembly Debates (1924), vol. IV, pt i, p. 365. The extract is from the speech of Sir Malcolm Hailey on the following resolution moved by Diwan Bahadur T. Rangachariar in the Indian Legislative Assembly : ' This Assembly recommends to the Governor-General in Council that he be pleased to take at a very early date the necessary steps (including if necessary procuring the appointment of a Royal Commission) for revising the Government of India Act so as to secure for India full self-governing Dominion Status within the British Empire and Provincial Autonomy in the Provinces.'—ibid., p. 349. [Ed.]

[3] pp. 1-3.

put their case on the higher plane of complete independence, but we are not aware of any who would be satisfied with anything lower than full Dominion Status. On the assumption that India is to have the status of a member of the British Commonwealth of Nations there is scarcely any difference of opinion between one section or another of political India. It may be safely premised that the greatest common factor of agreement among the well recognized political parties in India is that the status and position of India should in no case be lower than that of the self-governing Dominions such as Canada, Australia, South Africa or the Irish Free State. In one word the attainment of Dominion Status is not viewed as a remote stage of our evolution but as the next immediate step. That being so it would in ordinary circumstances be unnecessary for us to justify the basis of our recommendations.

* * *

'Dominion Status' is a well understood phrase in constitutional law and though the task of defining it with precision may be difficult, yet everyone acquainted with the history and growth of the political institutions prevailing in the Dominions understands what is meant by it. At the Imperial Conference of 1926 the position of the group of self-governing communities composed of Great Britain and the Dominions was defined as follows: 'They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.' (Keith, *Responsible Government*, vol. II, p. 1224). The learned author from whom we have quoted says that 'the definition may be admired for its intention rather than for its accuracy, as a description of fact as opposed to ideal'. We are content to look to its intention, and we feel that such difficulties as may arise in the actual working of a Constitution, the basis of which is Dominion Status, in relation to the other members of the British Commonwealth of Nations may well be left to be solved in the case of the 'Dominion of India' as in that of any other 'Dominion', by those wholesome moral and political influences which regulate and must regulate the relations of a composite Commonwealth of Nations.[1]

(3) *Pandit Motilal Nehru on Dominion Status v. Complete Independence, 29 December 1928*[2]

. . . . What is our destination?

My answer straight and simple is FREEDOM in substance, and not merely in form, by whatever name you call it. The Madras Congress has declared the goal as 'Complete Independence'. The All-Parties Committee has recommended 'Dominion Status'. I have explained

[1] Cl. I of Draft Constitution as proposed by the Committee was as follows:
'India shall have the same constitutional status in the comity of nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having powers to make laws for the peace, order and good government of India, and an executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India.' [Ed.]

[2] *Presidential Address of Pandit Motilal Nehru, Forty-third Indian National Congress* (Calcutta, 29 December 1928), pp. 15-24.

my position more than once, but with your permission I shall restate it here as clearly as I can. To put it in a nutshell it comes to this : I am for Complete Independence—as complete as it can be—but I am not against full Dominion Status—as full as any Dominion possesses it today—provided I get it before it loses all attraction. I am for severance of British connexion as it subsists with us today, but am not against it as it exists with the Dominions.

Let me explain. National freedom unrestricted and unqualified is the natural craving of the human soul. I do not believe that there is a single Indian, be he or she a member of a party or group, or one completely detached from all parties and groups, who does not love freedom or will not have it. Differences arise only when the question is raised whether it is possible to have and to keep freedom ; and it is then that we find opinion sharply divided. There are those who have the faith in them and in their countrymen to answer the question by an emphatic ' yes '—and I may at once say that I am one of them. But there are also those who will shake their heads, some from conviction and others in doubt. Complete Independence is the goal of the former, Dominion Status that of the latter. I will not undertake a fruitless inquiry into the relation or want of relation between Independence and Dominion Status. It does not matter to me whether theoretically they belong to the same or different stocks, or whether one is or is not the negation of the other. What matters to me is that Dominion Status involves a very considerable measure of freedom bordering on Complete Independence and is any day preferable to complete dependence. I am therefore not against an exchange of our abject dependence with whatever measure of freedom there is in full Dominion Status if such exchange is offered. But I cannot make Dominion Status my goal as it has to come from another party over whom I have no control. The only way I can acquire such control is by working in right earnest for Complete Independence. I say ' in right earnest ' because I know mere bluff will not take me far ; it is only when Complete Independence is in sight that the party in power will be inclined to negotiate for something less. Empty bluff will not carry us to that stage. Solid work and ungrudging sacrifice alone will do it. When that work is done, and sacrifice made, the party having the whip hand will dictate. Whether it is to be Dominion Status or Complete Independence will depend upon whether the conditions then prevailing are similar to those of Ireland or to those of the United States of America at the time when each came into what she now has. Meanwhile, there is nothing before us but a protracted life-and-death struggle on the one side, and continued repression relieved by an occasional dose of undiluted oppression on the other. It follows therefore that whatever the ultimate goal, we must be prepared to traverse the same thorny path to reach it. If we are not so prepared, independence will ever be an idle dream and Dominion Status an ever receding will-o'-the-wisp.

* * *

I must here ease the minds of those who fear that the moment Dominion Status is granted to us, we shall use it to throw off British connexion altogether. In the speech from which I have already quoted, Lord Irwin said :

'Those in Great Britain who sympathize most warmly with the ideal of India attaining at the earliest possible moment the status of any of the other great Dominions of the Crown will find the ground cut from their feet if British opinion ever becomes convinced, as some apparently are now endeavouring to convince it, that so-called Dominion Status was only valued by India as a stepping stone to a complete severance of her connexion with the British Commonwealth.'

There is no foundation for this apprehension and there is no reason whatever why we should seek complete severance of British connexion if we are put on terms of perfect equality with the Dominions. If we are not put on such terms it will not be Dominion Status; we will not take a colourable imitation. It must therefore be clearly understood that Dominion Status has to be offered and accepted with all its implications, its rights and obligations, which both parties will be in honour bound to respect and uphold. But as Mahatmaji has put it, we 'would not hesitate to sever all connexion, if severance became necessary through Britain's own fault'. It is conceivable that we may be driven to separation by the treatment accorded to us by Britain herself, and in that case we shall have precisely the same remedy as the Dominions now have.

It will, I hope, now be clear why I say that I am for Complete Independence and at the same time not against Dominion Status, if the latter comes without avoidable delay. It is impossible to say which of the parties will have the whip hand at the psychological moment. Great Britain has the whip hand today, and the psychological moment for her to offer, and for India to accept, full Dominion Status, has arrived. If Great Britain will not avail herself of the opportunity India will have the whip hand tomorrow, and then will come the psychological moment for her to wrest Complete Independence from Great Britain. No offer of Dominion Status will then be acceptable.

* * *

They (the advocates of Complete Independence) say there are grave reasons for not accepting Dominion Status, even in our present circumstances. I shall now examine those reasons, as far as I have been able to ascertain them from their public speeches. It is said that Dominion Status will not destroy imperialism. My answer is, nor will Complete Independence do it. It has not done it in many other countries of the world. There is no doubt that full-blooded socialism will do it. But to seek to establish full-blooded socialism in a country lying prostrate and heavily chained at the feet of its exploiters is to cry for the moon. We have to shake off our chains before we can talk even of Dominion Status. On the same lines the altruistic argument is advanced that the British Commonwealth of Nations is an imperialist combine and we should not enter into an unholy alliance with it against the oppressed and exploited nations of the world. But it so happens that at the present moment we are not less oppressed and exploited than any other nation, and I do not see why, once we get rid of that oppression and exploitation, we should lend a willing hand in oppressing and exploiting others. It is true that those who enjoy Dominion Status at present are carrying on their own little games of exploitation because it suits them to do so. But there can be no possible compulsion on India to resort to it provided

only the legal status acquired is as full as that enjoyed by the Dominions. It is now settled beyond dispute that the Dominions are not bound to join England in her wars if they are not so inclined.

Perhaps the most important reason given is that the freedom involved in Dominion Status, being in its very nature restricted, the demand for it will divert attention from the goal of Complete Independence and retard the development of the capacity for sacrifice. That may be so in the case of those who think that Dominion Status will come as a free gift from Britain, but cannot apply to those who believe that it can only be won by direct action after cultivating the fullest capacity for sacrifice. The other arguments against Dominion Status are arguments which prove that Britain will never grant it to India. I fully agree with those arguments and can suggest a few more leading to the same conclusion, but I do not wish to quarrel with those who have greater faith in Great Britain and am willing to give them a chance. I cannot expect them to go with me out of their own way if I refuse to accompany them on the way common to both. Of the same nature is the argument that Dominion Status is wholly unsuited to our genius and we can never pull on with the other members of the Commonwealth of Nations. This is true, not because there is any inherent incapacity in us, but because those other members are not likely to admit us on terms of perfect equality into their family. This is stating the same proposition in a different way, and really means that full Dominion Status will never be granted to us. The answer is : we shall not take anything less.

I have often asked some of our friends to whom Dominion Status is anathema what they would do if it were to be offered today. The invariable answer has been that they would consider the offer when made by the British Government. To the further question, whether they would accept the offer if it followed the main features of the schemes adopted by the All-Parties Conference, I have never been able to get a clear answer. But objection is taken to the preparation of any scheme of government on Dominion lines by us on the ground that it is for Britain, and not India, to make the offer. It is pointed out that those who enjoy Dominion Status did not fight for it but achieved it in the course of their struggle for Complete Independence, the offer having come from Great Britain. I am quite clear in my own mind that substantially the same process will have to be repeated in India if we are ever to have Dominion Status, and as I have already pointed out, we cannot reasonably accept it unless Complete Independence is in sight. But I cannot understand why it is not open to us to offer terms to Great Britain, as much as it is open to her to offer terms to us. If the offer is honourable to those who make it as well as to those who accept it, it does not matter to me who is the proposer and who the acceptor.

(4) *Lord Linlithgow on the Future of Indo-British Relations, 18 June 1934*[1]

41. There are moments in the affairs of nations when a way is opened for the removal of long-standing differences and misunderstandings and

[1] Draft Report by Lord Linlithgow (Chairman) submitted to the Joint Select Committee on Indian Constitutional Reforms on 18 June 1934.—*Report of the Joint Committee on Indian Constitutional Reform* (Session 1933-4), *Proceedings*, vol. I, pt ii.

for the establishment between people and people of new relations more in harmony with the circumstances of the time than those which they replace. Adjustments of this order, when they involve a transference of political power, must inevitably provide a sharp test of national character ; and the instinct for the time and manner of the change is the sure mark of political sagacity and experience. If there are those to whom the majestic spectacle of an Indian Empire makes so powerful an appeal that every concession appears almost as a betrayal of a trust, we would ask them to look at the other side of the picture, different indeed in content, but not less charged with realities. India also has a right to be heard before judgement is pronounced ; and her plea to be allowed the opportunity of applying principles and doctrines which we ourselves have taught cannot be met by a simple traverse or by a denial of her interest in the cause.

42. It has seemed to some that to permit India to control her own destiny is to sever the tie which unites her to the Crown and to the United Kingdom. Never could we contemplate the rupture of that beneficent and honourable association ; but we believe that a union of partners may prove an even more enduring bond. We do not deny that the creation of an Indian Empire has profoundly affected the position of the United Kingdom and has magnified its influence in the affairs of the world ; but we do not think that the selfish or vainglorious element predominates in the pride which this country takes in the work accomplished. The best of those who were and are responsible for it have ever regarded themselves as the servants of India and not merely as the agents of a foreign power ; nor do we forget that it could not have been carried through without the co-operation of Indian hands. It has not needed our inquiry to remind us how great a place India fills in our own history. There is no part of His Majesty's Dominions with the same power to recall memories or to stir emotions, and none with so great a succession of warriors and administrators, by the story of whose achievements our hearts are still moved, as Sir Philip Sidney by the song of Percy and Douglas, more than with a trumpet. But the whole earth is the sepulchre of famous men, and those of whom we speak are now become a part no less of India than of English history. Their arduous and patient labours founded a new and mighty State ; and it is upon the foundations which they have laid that, as we hope, an Indian Federation will be built, in which under the Crown the people of India will find political contentment as well as scope for the free and orderly growth of national life.

III. The Indian Round Table Conferences, 1929-32

(1) *Statement by His Excellency the Viceroy, Lord Irwin, on 'Dominion Status as the Goal of the Indian Political Evolution' and 'Decision to hold a Round Table Conference', 31 October 1929*[1]

The Chairman of the [Indian Statutory] Commission has pointed out in correspondence with the Prime Minister, which, I understand, is being published in England, that as their investigation has proceeded, he and

[1] *India in 1929-30*, pp. 466-8.

his colleagues have been greatly impressed, in considering the direction which the future constitutional development of India is likely to take, with the importance of bearing in mind the relations which may, at some future time, develop between British India and the Indian States. In his judgement it is essential that the methods, by which this future relationship between these two constituent parts of Greater India may be adjusted, should be fully examined. He has further expressed the opinion that if the Commission's Report and the proposals subsequently to be framed by the Government take this wider range, it would appear necessary for the Government to revise the scheme of procedure as at present proposed. He suggests that what might be required, after the Reports of the Statutory Commission and the Indian Central Committee have been made, considered and published, but before the stage is reached of the Joint Parliamentary Committee, would be the setting up of a Conference in which His Majesty's Government should meet representatives both of British India and of the States, for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament. The procedure by Joint Parliamentary Committee conferring with delegations from the Indian Legislature and other bodies, which was previously contemplated and is referred to in Sir John Simon's letter to myself of 6th February 1928,[1] would still be appropriate for the examination of the Bill when it is subsequently placed before Parliament, but would, in the opinion of the Commission, obviously have to be preceded by some such Conference as they have suggested.

With these views I understand that His Majesty's Government are in complete accord. For, while they will greatly desire, when the time comes, to be able to deal with the question of British Indian political development under conditions the most favourable to its successful treatment, they are, with the Commission, deeply sensible of the importance of bringing under comprehensive review the whole problem of the relations of British India and the Indian States. Indeed, an adjustment of these interests in their view is essential for the complete fulfilment of what they consider to be the underlying purpose of British policy, whatever may be the method for its furtherance which Parliament may decide to adopt.

The goal of British policy was stated in the declaration of August 1917 to be that of providing for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire. As I recently pointed out, my own Instrument of Instruction from the King-Emperor expressly states that it is His Majesty's will and pleasure that the plans laid by Parliament in 1919 should be the means by which British India may attain its due place among His Dominions. Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the Statute of 1919,

[1] *Indian Statutory Commission Report*, 1930, vol. I, p. xvii. [Ed.]

I am authorized on behalf of His Majesty's Government to state clearly that in their judgement it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status.

In the full realization of this policy, it is evidently important that the Indian States should be afforded an opportunity of finding their place, and even if we cannot at present exactly foresee on what lines this development may be shaped, it is from every point of view desirable that whatever can be done should be done to ensure that action taken now is not inconsistent with the attainment of the ultimate purpose which those, whether in British India or the States, who look forward to some unity of all-India, have in view.

His Majesty's Government consider that both these objects, namely, that of finding the best approach to the British Indian side of the problem, and secondly, of ensuring that in this process the wider question of closer relations in the future between the two parts of Greater India is not overlooked, can best be achieved by the adoption of a procedure such as the Commission has outlined. When, therefore, the Commission and the Indian Central Committee have submitted their Reports and these have been published, and when His Majesty's Government have been able, in consultation with the Government of India, to consider these matters in the light of all the material then available, they will propose to invite representatives of different parties and interests in British India and representatives of the Indian States to meet them, separately or together, as circumstances may demand, for the purpose of conference and discussion in regard both to the British-Indian and the all-Indian problems. It will be their earnest hope that by this means it may subsequently prove possible on these grave issues to submit proposals to Parliament which may command a wide measure of general assent.

(2) *Resolution on Complete Independence and the Round Table Conference passed by the Lahore Session of the Indian National Congress, 31 December 1929*[1]

The Congress endorses the action of the Working Committee in connexion with the manifesto signed by party leaders, including congressmen, on the Viceregal pronouncement of October 31 relating to Dominion Status, and appreciates the efforts of the Viceroy towards a settlement of the national movement for Swaraj. The Congress, however, having considered all that has since happened, and the result of the meeting between Mahatma Gandhi, Pandit Motilal Nehru and other leaders and the Viceroy, is of opinion that nothing is to be gained in the existing circumstances by the Congress being represented at the proposed Round Table Conference. This Congress, therefore, in pursuance of the resolution passed at its session at Calcutta last year, declares that the word ' Swaraj ' in article one of the Congress constitution shall mean Complete Independence, and further declares the entire scheme of the Nehru Committee's Report to have lapsed, and hopes that all congressmen will henceforth devote their exclusive attention to the attainment of Complete Independence for India. As a preliminary step towards organizing a campaign

[1] The Indian National Congress, Resolutions, 1929 (Allahabad), p. 58.

for Independence, and in order to make the Congress policy as consistent as possible with the change of creed, this Congress resolves upon a complete boycott of the Central and Provincial Legislatures and Committees constituted by Government and calls upon congressmen and others taking part in the national movement to abstain from participating directly or indirectly in future elections, and directs the present Congress Members of the Legislatures and Committees to resign their seats. This Congress appeals to the nation zealously to prosecute the constructive programme of the Congress, and authorizes the All-India Congress Committee,[1] whenever it deems fit, to launch upon a programme of Civil Disobedience including non-payment of taxes, whether in selected areas or otherwise, and under such safeguards as it may consider necessary.

(3) *His Excellency the Viceroy Lord Irwin's Clarification of his Statement of 31 October 1929 regarding the Purpose of convening the Round Table Conference, 25 January 1930*[2]

The intention of my statement [of 31 October 1929[3]], of which I believe the purport to have been unmistakable, and which carried the full authority of His Majesty's Government, was to focus attention on three salient points. Firstly, while saying that obviously no British Government could prejudge the policy which it would recommend to Parliament after the report of the Statutory Commission had been considered, it restated in unequivocal terms the goal to which British policy in regard to India was directed. Secondly, it emphasized Sir John Simon's assertion that the facts of the situation compel us to make a constructive attempt to face the problem of the Indian States, with due regard to the treaties which regulate their relations with the British Crown; and, lastly, it intimated the intention of His Majesty's Government to convene a Conference on these matters before they themselves prejudged them by formulation of even draft conclusions.

I have never sought to delude Indian opinion into the belief that a definition of purpose, however plainly stated, would of itself, by the enunciation of a phrase, provide a solution for the problems which have to be solved before that purpose is fully realized. The assertion of a goal, however precise its terms, is of necessity a different thing from the goal's attainment. No sensible traveller would feel that the clear definition of his destination was the same thing as the completion of his journey. But it is an assurance of direction, and in this case I believe it to be something of tangible value to India that those who demand full equality with the other self-governing units of the British Commonwealth on her behalf should know that Great Britain on her side also desires to lend her assistance to India in attaining to that position. The desire of most responsible opinion in India and that of His Majesty's

[1] The All-India Congress Committee, meeting on 21 March 1930, authorized Gandhiji to initiate and control the Civil Disobedience movement. [Ed.]

[2] Address delivered at the Delhi Session of the Indian Legislative Assembly on 25 January 1930.—*Speeches by Lord Irwin*, vol. II, pp. 96-8 (Government of India Press, Simla, 1931).

[3] See pp. 225-7 above. [Ed.]

Government is thus the same, and where unity of purpose is so assured we ought surely to be prepared to approach the practical difficulties with greater hopefulness. For my own part, if I am satisfied that someone with whom I have business to transact desires the same end as myself, I feel the better able to discuss any honest difference that may emerge between us, as to the means of its complete attainment, with a feeling of confidence that on the main purpose we do not differ.

Although it is true that in her external relations with other parts of the Empire India exhibits already several of the attributes of a self-governing Dominion, it is also true that Indian political opinion is not at present disposed to attach full value to these attributes of status, for the reason that their practical exercise is for the most part subject to the control or concurrence of His Majesty's Government. The demand for Dominion Status that is now made on behalf of India is based upon the general claim to be free from that control, more especially in those fields that are regarded as of predominantly domestic interest. And here, as is generally recognized, there are real difficulties internal to India, and peculiar to her circumstances and world position, that have to be faced, and in regard to which there may be sharp variation of opinion both in India and in Great Britain. The existence of these difficulties cannot be seriously disputed, and the whole object of the Conference now proposed is to afford opportunity to His Majesty's Government of examining in free consultation with Indian leaders how they may best, most rapidly, and most surely, be surmounted.

The Conference which His Majesty's Government will convene is not indeed the Conference that those have demanded, who claimed that its duty should be to proceed by way of majority vote to the fashioning of an Indian Constitution which should thereafter be accepted unchanged by Parliament. It is evident that any such procedure would be impracticable and impossible of reconciliation with the constitutional responsibility that must rest both on His Majesty's Government and upon Parliament. But, though the Conference cannot assume the duty that appertains to His Majesty's Government, it will be convened for the purpose hardly less important of elucidating and harmonizing opinion, and so affording guidance to His Majesty's Government on whom the responsibility must subsequently devolve of drafting proposals for the consideration of Parliament. It is thus evident that the intrinsic soundness of any particular proposals made, and the manner in which the argument for them is presented, will be more important factors in the Conference than the exact numerical representation enjoyed by any of the different sections of opinion that will participate in the proceedings.

(4) *Statement of Policy by Mr Ramsay MacDonald, Prime Minister, on behalf of His Majesty's Government at the Conclusion of the first Session of the Indian Round Table Conference, 19 January 1931*[1]

The view of His Majesty's Government is that responsibility for the government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during

[1] *The Indian Round Table Conference* (*First Session*), *Proceedings*, pp. 505-8.

a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by Minorities to protect their political liberties and rights.

In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the Reserved powers are so framed and exercised as not to prejudice the advance of India through the new Constitution to full responsibility for her own government.

His Majesty's Government, whilst making this declaration, is aware that some of the conditions which are essential to the working of such a Constitution as is contemplated, have not been finally settled, but it believes that as the result of the work done here, they have been brought to a point which encourages the hope that further negotiations, after this declaration, will be successful.

His Majesty's Government has taken note of the fact that the deliberations of the Conference have proceeded on the basis, accepted by all parties, that the Central Government should be a federation of all-India, embracing both the Indian States and British India in a bi-cameral Legislature. The precise form and structure of the new Federal Government must be determined after further discussion with the Princes and representatives of British India. The range of subjects to be committed to it will also require further discussion, because the Federal Government will have authority only in such matters concerning the States as will be ceded by their Rulers in agreements made by them on entering into federation. The connexion of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy.

With a Legislature constituted on a federal basis, His Majesty's Government will be prepared to recognize the principle of the responsibility of the Executive to the Legislature.

Under existing conditions the subjects of Defence and External Affairs will be reserved to the Governor-General, and arrangements will be made to place in his hands the powers necessary for the administration of those subjects. Moreover, as the Governor-General must, as a last resort, be able in an emergency to maintain the tranquillity of the State, and must similarly be responsible for the observance of the constitutional rights of Minorities, he must be granted the necessary powers for these purposes.

As regards Finance, the transfer of financial responsibility must necessarily be subject to such conditions as will ensure the fulfilment of the obligations incurred under the authority of the Secretary of State and the maintenance unimpaired of the financial stability and credit of India. The Report of the Federal Structure Sub-Committee indicates some ways of dealing with this subject including a Reserve Bank, the service of loans, and Exchange policy, which, in the view of His Majesty's Government, will have to be provided for somehow in the new Constitution. It is of vital interest to all parties in India to accept these provisions, to maintain financial confidence. Subject to these provisions the Indian Government would have full financial responsibility for the methods of raising revenue and for the control of expenditure on non-Reserved Services.

This will mean that under existing conditions the Central Legislature and Executive will have some features of dualism which will have to be fitted into the constitutional structure.

The provision of reserved powers is necessary in the circumstances and some such reservation has indeed been incidental to the development of most free constitutions. But every care must be taken to prevent conditions arising which will necessitate their use. It is, for instance, undesirable that Ministers should trust to the special powers of the Governor-General as a means of avoiding responsibilities which are properly their own, thus defeating the development of responsible government by bringing into use powers meant to lie in reserve and in the background. Let there be no mistake about that.

The Governors' Provinces will be constituted on a basis of full responsibility. Their Ministries will be taken from the Legislature and will be jointly responsible to it. The range of Provincial subjects will be so defined as to give them the greatest possible measure of self-government. The authority of the Federal Government will be limited to provisions required to secure its administration of Federal subjects, and so discharge its responsibility for subjects defined in the constitution as of all-India concern.

There will be reserved to the Governor only that minimum of special powers which is required in order to secure, in exceptional circumstances, the preservation of tranquillity, and to guarantee the maintenance of rights provided by Statute for the Public Services and Minorities.

Finally, His Majesty's Government considers that the institution in the Provinces of responsible government requires both that the Legislatures should be enlarged, and that they should be based on a more liberal franchise.

In framing the Constitution His Majesty's Government considers that it will be its duty to insert provisions guaranteeing to the various Minorities, in addition to political representation, that differences of religion, race, sect or caste, shall not themselves constitute civic disabilities.

In the opinion of His Majesty's Government it is the duty of the communities to come to an agreement amongst themselves on the points raised by the Minorities Sub-Committee but not settled there. During the continuing negotiations such an agreement ought to be reached and the Government will continue to render what good offices it can to help to secure that end, as it is anxious not only that no delay should take place in putting the new Constitution into operation, but that it should start with the goodwill and confidence of all the communities concerned.

The various Sub-Committees which have been studying the more important principles of a Constitution which would meet Indian conditions have surveyed a considerable part of the structure in detail and the still unsettled points have been advanced a good way to an agreement. His Majesty's Government, however, in view of the character of the Conference and of the limited time at its disposal in London, has deemed it advisable to suspend its work at this point, so that Indian opinion may be consulted upon the work done, and expedients considered for overcoming the difficulties which have been raised. His Majesty's Government will consider, without delay, a plan by which our co-operation may

be continued so that the results of our completed work may be seen in a new Indian Constitution. If, in the meantime, there is a response to the Viceroy's appeal to those engaged at present in Civil Disobedience, and others wish to co-operate on the general lines of this declaration, steps will be taken to enlist their services.

(5) *The Gandhi-Irwin Agreement, 5 March 1931*[1]

1. Consequent on the conversations that have taken place between His Excellency the Viceroy and Mr Gandhi it has been arranged that the Civil Disobedience movement be discontinued, and that, with the approval of His Majesty's Government, certain action be taken by the Government of India and Local Governments.

2. As regards constitutional questions, the scope of future discussion is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for the constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined, federation is an essential part ; so also are Indian responsibility and reservations or safeguards in the interests of India, for such matters as, for instance, defence ; external affairs ; the position of Minorities ; the financial credit of India, and the discharge of obligations.

3. In pursuance of the statement made by the Prime Minister in his announcement of January 19, 1931,[2] steps will be taken for the participation of the representatives of the Congress in the future discussions that are to take place on the scheme of constitutional reform.

(6) *Resolution of the All-India Congress Committee on the Gandhi-Irwin Agreement, 27-8 March 1931*[3]

This Congress, having considered the provisional settlement between the Working Committee and the Government of India, endorses it, and desires to make it clear that the Congress goal of *Purna Swaraj* (Complete Independence) remains intact. In the event of the way being otherwise open to the Congress to be represented at any conference with the representatives of the British Government, the Congress delegation will work for this objective and, in particular, so as to give the nation control over the defence forces, external affairs, finance and fiscal and economic policy, and to have a scrutiny, by an impartial tribunal, of the financial transactions of the British Government in India and to examine and assess the obligations to be undertaken by India or England, and the right to either party to end the partnership at will ; provided, however, that the Congress delegation will be free to accept such adjustments as may be demonstrably necessary in the interest of India.

The Congress appoints and authorizes Mahatma Gandhi to represent it at the Conference with the addition of such other delegates as the Working Committee may appoint to act under his leadership.

[1] P. Sitaramayya, *The History of the Indian National Congress*, vol. I, pp. 437-8.

[2] See pp. 229-32 above. [Ed.]

[3] *The Indian National Congress, Resolutions*, 1930-4 (All-India Congress Committee, Allahabad), pp. 61-2.

(7) *Speech by Gandhiji at the second plenary Meeting of the second Session of the Indian Round Table Conference, 30 November 1931*[1]

Congress claim to represent the Masses

. . . I would first of all say a few words in connexion with the Reports that have been submitted to this Conference. You will find in these Reports that generally it has been stated that so and so is the opinion of a large majority, some, however, have expressed an opinion to the contrary, and so on. Parties who have dissented have not been stated. I had heard when I was in India, and I was told when I came here, that no decision or no decisions will be taken by the ordinary rule of majority, and I do not want to mention this fact here by way of complaint that the Reports have been so framed as if the proceedings were governed by the test of majority. But it was necessary for me to mention this fact, because to most of these Reports you will find that there is a dissenting opinion, and in most of the cases that dissent unfortunately happens to belong to me. It was not a matter of joy to have to dissent from fellow-delegates, but I felt that I could not truly represent the Congress unless I notified that dissent.

There is another thing which I want to bring to the notice of this Conference, namely : what is the meaning of the dissent of the Congress ? I said at one of the preliminary meetings of the Federal Structure Committee that the Congress claimed to represent over 85 per cent of the population of India, that is to say the dumb, toiling, semi-starved millions. But I went further : that the Congress claimed also by right of service to represent even the Princes, if they would pardon my putting forth that claim, and the landed gentry, the educated class. I wish to repeat that claim and I wish this evening to emphasize that claim.

All the other parties at this meeting represent sectional interests. Congress alone claims to represent the whole of India, all interests. It is no communal organization ; it is a determined enemy of communalism in any shape or form. Congress knows no distinction of race, colour or creed ; its platform is universal. It may not always have lived up to the creed. I do not know a single human organization that lives up to its creed. Congress has failed very often to my knowledge. It may have failed more often to the knowledge of its critics. But the worst critic will have to recognize, as it has been recognized, that the National Congress of India is a daily-growing organization, that its message penetrates the remotest village of India ; that on given occasions the Congress has been able to demonstrate its influence over and among these masses who inhabit 700,000 villages.

And yet here I see that the Congress is treated as one of the parties. I do not mind it ; I do not regard it as a calamity for the Congress ; but I do regard it as a calamity for the purpose of doing the work for which we have gathered together here. I wish I could convince all the British public men, the British Ministers, that the Congress is capable of delivering the goods. The Congress is the only all-India-wide national organization, bereft of any communal basis ; that it does represent all the Minorities which have lodged their claim here and which, or the signatories on their

[1] *Indian Round Table Conference (Second Session), Proceedings*, pp. 389-98.

behalf, claim—I hold unjustifiably—to represent 46 per cent of the population of India.[1] The Congress, I say, claims to represent all these Minorities.

What a great difference it would be today if this claim on behalf of the Congress was recognized. I feel that I have to state this claim with some degree of emphasis on behalf of peace, for the sake of achieving the purpose which is common to all of us, to you Englishmen who sit at this table, and to us the Indian men and women who also sit at this table. I say so for this reason. Congress is a powerful organization ; Congress is an organization which has been accused of running or desiring to run a parallel Government ; and in a way I have endorsed the charge. If you could understand the working of the Congress, you would welcome an organization which could run a parallel Government and show that it is possible for an organization, voluntary, without any force at its command, to run the machinery of Government even under adverse circumstances. But no. Although you have invited the Congress, you distrust the Congress. Although you have invited the Congress, you reject its claim to represent the whole of India. Of course it is possible at this end of the world to dispute that claim, and it is not possible for me to prove this claim ; but, all the same, if you find me asserting that claim, I do so because a tremendous responsibility rests upon my shoulders.

* * *

Safeguards

I do not want to break the bond between England and India, but I do want to transform that bond. I want to transform that slavery into complete freedom for my country. Call it Complete Independence or whatever you like, I will not quarrel about that word, and even though my countrymen may dispute with me for having taken some other word I shall be able to bear down that opposition so long as the content of the word that you may suggest to me bears the same meaning. Hence I have times without number to urge upon your attention that the safeguards that have been suggested are completely unsatisfactory. They are not in the interests of India.

Three experts from the Federation of Commerce and Industry have in their own manner, each in his different manner, told you out of their expert experience how utterly impossible it is for any body of responsible Ministers to tackle the problem of administration when 80 per cent of India's resources are mortgaged irretrievably. Better than I could have shown to you they have shown, out of the amplitude of their knowledge, what these financial safeguards mean for India. They mean the complete cramping of India. They have discussed at this table financial safeguards, but that includes necessarily the question of Defence and the question of the Army. Yet while I say that the safeguards are unsatisfactory as they have been presented, I have not hesitated to say, and I do not hesitate to repeat, that the Congress is pledged to giving safeguards, endorsing safeguards which may be demonstrated to be in the interests of India.

[1] See p. 255 below. [Ed.]

At one of the sittings of the Federal Structure Committee I had no hesitation in amplifying the admission and saying that these safeguards must be also of benefit to Great Britain. I do not want safeguards which are merely beneficial to India and prejudicial to the real interests of Great Britain. The fancied interests of India will have to be sacrificed. The fancied interests of Great Britain will have to be sacrificed. The illegitimate interests of India will have to be sacrificed. The illegitimate interests of Great Britain will also have to be sacrificed.

* * *

Hindu-Mussulman Problem

I urge you then to read that writing on the wall. I ask you not to try the patience of a people known to be proverbially patient. We speak of the mild Hindu, and the Mussulman also by contact, good or evil, with the Hindu, has himself become mild. And that mention of the Mussulman brings me to the baffling problem of Minorities. Believe me, that problem exists here, and I repeat what I used to say in India—I have not forgotten those words—that without the problem of Minorities being solved there is no Swaraj for India, there is no freedom for India. I know that ; I realize it ; and yet I came here in the hope, perchance, that I might be able to pull through a solution here. But I do not despair of some day or other finding a real and living solution in connexion with the Minorities problem. I repeat what I have said elsewhere, that so long as the wedge in the shape of foreign rule divides community from community and class from class, there will be no real living solution, there will be no living friendship between these communities. It will be after all and at best a paper solution. But immediately you withdraw that wedge, the domestic ties, the domestic affections, the knowledge of common birth—do you suppose that all these will count for nothing ?

Were Hindus and Mussulmans and Sikhs always at war with one another when there was no British rule, when there was no English face seen there ? We have chapter and verse given to us by Hindu historians and by Mussulman historians to say that we were living in comparative peace even then. And Hindus and Mussulmans in the villages are not even today quarrelling. In those days they were not known to quarrel at all. The late Maulana Muhammad Ali often used to tell me, and he was himself a bit of an historian, he said, ' If God '—' Allah ', as he called God—' gives me life, I propose to write the history of Mussulman rule in India ; and then I will show through documents that British people have erred, that Aurangzeb was not so vile as he has been painted by the British historian ; that the Mogul rule was not so bad as it has been shown to us in British history ' ; and so on. And so have Hindu historians written. This quarrel is not old ; this quarrel is coeval with this acute shame. I dare to say it is coeval with the British advent, and immediately this relationship, the unfortunate, artificial, unnatural relationship between Great Britain and India is transformed into a natural relationship, when it becomes, if it does become, a voluntary partnership to be given up, to be dissolved at the will of either party, when it becomes that you will find that Hindus, Mussulmans, Sikhs, Europeans, Anglo-Indians, Christians, Untouchables, will all live together as one man.

The Princes

I want to say one word about the Princes, and I shall have done. I have not said much about the Princes, nor do I intend to say much tonight about the Princes, but I should be wronging them, and I should be wronging the Congress if I did not register my claim, not with the Round Table Conference, but with the Princes. It is open to the Princes to give their terms on which they will join the Federation. I have appealed to them to make the path easy for those who inhabit the other part of India, and therefore I can only make these suggestions for their favourable consideration, for their earnest consideration. I think that if they accepted, no matter what they are, but some fundamental rights as the common property of all India, and if they accepted that position and allowed those rights to be tested by the Court, which will be again of their own creation, and if they introduced elements—only elements—of representation on behalf of their subjects, I think that they would have gone a long way to conciliate their subjects. They would have gone a long way to show to the world and to show to the whole of India that they are also fired with a democratic spirit, that they do not want to remain undiluted autocrats, but that they want to become constitutional monarchs even as King George of Great Britain is.

(8) *Statement by Mr Ramsay MacDonald, Prime Minister, at the final plenary Session of the second Session of the Indian Round Table Conference, 1 December 1931*[1]

At the beginning of the year I made a declaration of the policy of the then Government, and I am authorized by the present one to give you and India a specific assurance that it remains their policy.[2] . . .

* * *

In particular, they desire to reaffirm their belief in an all-India Federation as offering the only hopeful solution of India's constitutional problem. They intend to pursue this plan unswervingly and to do their utmost to surmount the difficulties which now stand in the way of its realization. In order to give this declaration the fullest authority, the statement which I am now making to you will be circulated today as a White Paper to both Houses of Parliament, and the Government will ask Parliament to approve it this week.

The discussions which have been proceeding during the past two months have been of value in showing us more precisely the problems we have to solve, and have advanced us towards the solution of some of them. But they have also made it plain that others still require further examination and co-operative consideration. There is still difference of opinion, for instance as to the composition and powers of the Federal Legislature, and I regret that owing to the absence of a settlement of the key question of how to safeguard the Minorities under a responsible Central Government, the Conference has been unable to discuss effectively the nature of the Federal Executive and its relationship with the Legislature. Again, it has not yet been possible for the States to settle amongst

[1] *Indian Round Table Conference* (*Second Session*), *Proceedings*, pp. 415-18 and p. 420.

[2] See pp. 229-32 above. [Ed.]

themselves their place in the Federation and their mutual relationships within it. Our common purpose will not be advanced by ignoring these facts, nor by assuming that the difficulties they present will somehow solve themselves. Further thought, discussion and reconciliation of different interests and points of view are still required before we can translate broad general aims into the detailed machinery of a workable constitution. . . .

What then is the general position in which we find ourselves as regards a practical programme for the advancement of our common aims ? . . .

The great idea of all-India Federation still holds the field. The principle of a responsible Federal Government, subject to certain reservations and safeguards through a transition period, remains unchanged. And we are all agreed that the Governors' Provinces of the future are to be responsibly governed units, enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their own policies in their own sphere.

I should explain at once in connexion with that last point that we contemplate as one feature of the new order that the North-West Frontier Province should be constituted a Governor's Province, of the same status as other Governors' Provinces, but with due regard to the necessary requirements of the Frontier, and that, as in all other Governors' Provinces, the powers entrusted to the Governor to safeguard the safety and tranquillity of the Province shall be real and effective.

His Majesty's Government also accept in principle the proposition which was endorsed at the last Conference that Sind should be constituted a separate Province, if satisfactory means of financing it can be found. We therefore intend to ask the Government of India to arrange for a Conference with representatives of Sind for the purpose of trying to overcome the difficulties disclosed by the report of the expert financial investigation which has just been completed.

But I have digressed from the question of a programme in the light of the accepted factors—Federation as the aim and self-governing Provinces and the Indian States as its basis. As I have said, our discussions have made it clear to all of us that Federation cannot be achieved in a month or two. There is a mass of difficult constructive work still to be done, and there are important agreements to be sought by which the structure must be shaped and cemented. It is equally plain that the framing of a scheme of responsible government for the Provinces would be a simpler task which could be more speedily accomplished. The adjustments and modifications of the powers now exercised by the Central Government which would obviously have to be made in order to give real self-government to the Provinces should raise no insuperable difficulties. It has, therefore, been pressed upon the Government that the surest and speediest route to Federation would be to get these measures in train forthwith, and not to delay the assumption of full responsibility by the Provinces a day longer than is necessary. But it is clear that a partial advance does not commend itself to you. You have indicated your desire that no change should be made in the Constitution which is not effected by one all-embracing Statute covering the whole field, and His Majesty's Government have no intention of urging a responsibility

which, for whatever reasons, is considered at the moment premature or ill-advised. It may be that opinion and circumstances will change, and it is not necessary here and now to take any irrevocable decision. We intend, and have always intended, to press on with all possible despatch with the Federal plan. It would clearly be indefensible, however, to allow the present decision to stand in the way of the earliest possible constitutional advance in the North-West Frontier Province. We intend, therefore, to take the necessary steps as soon as may be to apply to the North-West Frontier Province, until the new constitutions are established, the provisions of the present Act relating to Governors' Provinces.

We must all, however, realize that there stands in the way of progress, whether for the Provinces or the Centre, that formidable obstacle, the communal deadlock. I have never concealed from you my conviction that this is above all others a problem for you to settle by agreement amongst yourselves. The first of the privileges and the burdens of a self-governing people is to agree how the democratic principle of representation is to be applied—or, in other words, who are to be represented and how it is to be done. This Conference has twice essayed this task ; twice it has failed. I cannot believe that you will demand that we shall accept these failures as final and conclusive.

But time presses. We shall soon find that our endeavours to proceed with our plans are held up (indeed they have been held up already) if you cannot present us with a settlement acceptable to all parties as the foundations upon which to build. In that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problems of representation, but also to decide as wisely and justly as possible what checks and balances the Constitution is to contain to protect Minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power. I desire to warn you that if the Government have to supply even temporarily this part of your Constitution which you are unable to supply for yourselves, and though it will be our care to provide the most ample safeguards for Minorities so that none of them need feel that they have been neglected, it will not be a satisfactory way of dealing with this problem. Let me also warn you that if you cannot come to an agreement on this amongst yourselves, it will add considerably to the difficulties of any Government here which shares our views of an Indian Constitution, and it will detract from the place which that Constitution will occupy amongst those of other nations. I therefore beg of you once more to take further opportunities to meet together and present us with an agreement.

We intend to go ahead. We have now brought our business down to specific problems which require close and intimate consideration, first of all by bodies which are really committees and not unwieldy conferences, and we must now set up machinery to do this kind of work. As that is being done and conclusions presented, we must be able to continue consultations with you. I propose, therefore, with your consent, to nominate in due course a small representative Committee—a Working Committee—of this Conference which will remain in being in India, with

which, through the Viceroy, we can keep in effective touch. I cannot here and now specify precisely how this Committee can best be employed. This is a matter which must be worked out and must to some extent depend on the reports of the Committees we propose to set up. But in the end, we shall have to meet again for a final review of the whole scheme.

* * *

I have already alluded to another matter to which you have given ample evidence that you attach great importance, and to which you will expect me to refer. A decision of the communal problem which provides only for representation of the communities in the Legislatures is not enough to secure what I may call 'natural rights'. When such provisions have been made, Minorities will still remain Minorities, and the Constitution must therefore contain provisions which will give all creeds and classes a due sense of security that the principle of majority government is not to be employed to their moral or material disadvantage in the body politic. The Government cannot undertake here and now to specify in detail what those provisions should be. Their form and scope will need the most anxious and careful consideration with a view to ensuring on the one hand that they are reasonably adequate for their purpose, and on the other that they do not encroach, to an extent which amounts to stultification, upon the principles of representative responsible government. In this matter the Committee of Consultation should play an important part for, here also, just as in regard to the method and proportions of electoral representation, it is vital to the success of the new Constitution that it should be framed on a basis of mutual agreement.

(9) *Statement by His Excellency the Viceroy, Lord Irwin, regarding the setting up of a Joint Select Committee of Parliament before the Introduction of the Government of India Bill, 27 June 1932*[1]

Since the policy of His Majesty's Government as announced to the Round Table Conference[2] was endorsed by Parliament, the primary concern of His Majesty's Government has been so to lay their plans as to facilitate its transmission into legislative results with the utmost possible dispatch. The first immediate steps required to supplement the discussions of the Conference were inquiries of the three Committees which have lately returned from India. The reports of two of these Committees are now in the hands of His Majesty's Government and as they hope shortly to receive that of the third, they are in a position to indicate the methods by which they intend to make further progress.

In the first place, His Majesty's Government have definitely decided to endeavour to give effect to their policy by means of a single Bill which will provide alike for autonomous Constitutions in the Provinces and States. They intend that this measure shall contain provisions for enabling Provincial Constitutions to be introduced without necessarily awaiting the completion of all the steps required for the actual inauguration of the Federation. Since it is an essential feature of His Majesty's Government's policy that Federation, which it will be the object of the

[1] *The Indian Annual Register* (1932), vol. I, pp. 410-12.
[2] See pp. 236-9 above. [Ed.]

Bill to construct, shall be a Federation of all India, it follows that the Units concerned must be prepared actually to federate and that proposals to be laid before Parliament to this end must be complete in all essentials. In particular, there must be reasonable assurance forthcoming at the time the Bill is introduced that the financial and other provisions for cementing of the structure will enable the Provinces, States, the Federal Government and Parliament alike adequately and harmoniously to fulfil their several functions and that interests which require to be safeguarded shall be assured of practical and efficient protection. But it is their intention so far as it lies within their power to spare no efforts to secure the fulfilment of these conditions and to this end they will continue to prosecute their endeavours to find means as speedily as possible for surmounting obstacles which a study of concrete details necessarily discloses.

His Majesty's Government have carefully considered the procedure by which they can, on the one hand, most expeditiously and efficiently overcome these obstacles and on the other hand retain the advantage of consultation and co-operation with Indian opinion which the Round Table Conference was designed to secure. After carefully considering the present position, they are convinced that matters have now reached a stage at which the settlement of urgent and important questions that still remain to be decided will only be delayed by the formal sessions of large bodies such as the Round Table Conference or Committees such as the Federal Structure Committee. They have come to the conclusion that the expeditious treatment of outstanding questions will best be secured by following a programme which, though it involves some variation in method, will secure to the full the collaboration which has been the underlying principle of the work accomplished hitherto.

In the first place they will take the next immediate step towards the removal of obstacles and will announce the decision which they have undertaken to give on those aspects of the communal problem which now retard progress. They are now engaged in the settlement of actual terms of the decision and unless unforeseen difficulties intervene they hope they will be able to announce it some time during the present summer.[1]

Secondly, on the assumption that communal decision removes obstacles which have been impeding progress they trust that as soon as their decisions have been announced, the Consultative Committee will reassemble and will proceed continuously with its programme of work bringing its collective advice to bear on numerous and important questions entrusted to it, many of which were not examined by the Conference or its Committees in London. Subject to discussion in the Consultative Committee of matters which affect both British India and Indian States, His Majesty's Government are considering the means by which solutions may be facilitated and expedited of those difficulties which confront them in connexion with matters affecting the States alone. His Majesty's Government greatly hope that such progress may result from the Consultative Committee discussions. There may be found remaining over from its final session only a few specific problems—for example, financial safeguards of such nature that they might appropriately be the subject of informal discussions in London with a few individuals whose personal experiences qualify them to speak with authority upon them. If this

[1] See pp. 261-5 below for the text of the Communal Award. [Ed.]

hope is fulfilled, their intention would be after such informal discussions to pass straight to Parliamentary stage on the following lines :

His Majesty's Government consider that the final stage of consultation with Indian opinion can usefully take place only on definite proposals. They, therefore, propose to invite both Houses of Parliament to set up a Joint Select Committee to consider their definite proposals for revision of the Constitution and to give the Committee powers to confer with representatives of Indian opinion and it is their intention, in the belief that this course will commend itself to Indian opinion, to invite Parliament to set up the Joint Select Committee before introduction of a Bill. It has been the intention of successive Governments that a Select Joint Committee of both Houses of Parliament should be called upon at some stage to examine the proposals for constitutional reform. His Majesty's Government hope that by their present decision to recommend that this important task shall be performed before any Bill is introduced, they facilitate Indian co-operation and ensure its effective influence in what is probably the most important stage in the shaping of constitutional reforms and at a time before irrevocable decisions have been reached by Parliament.

The programme I have indicated is based on the hope that inquiry by the Joint Select Committee may follow as the next formal stage after the conclusion of the Consultative Committee's business. But it may be that the course of discussions in the Consultative Committee may prove that matters will not be ripe for formulating definite proposals for the consideration of a Joint Select Committee without further consultation of a more formal character. In that event, at the cost of delaying their programme, His Majesty's Government will make arrangements accordingly, but they would regard it as essential unless the objects they have in view are to be frustrated, that the size and the personnel of the body to be summoned for such further discussions in London should be strictly determined with reference to the number and character of the subjects found to require further discussion. By a procedure formed on these lines, His Majesty's Government hope to ensure both rapid progress towards the objective in view and continuance of co-operation between British and Indian representatives on the one hand and between the three British parties on the other upon which so much of the success of the constitutional changes must inevitably depend.

IV. The Communal Tangle

(1) *Resolutions of the Indian National Congress on the Political, Religious and other Rights of Minorities, 28 December 1927*[1]

Part A. (*Political Rights*)

This Congress resolves :

1. That in any future scheme of Constitution, so far as representation in the various Legislatures is concerned, joint electorates in all the Provinces and in the Central Legislature be constituted.

[1] Resolutions passed on 28 December 1927 by the Indian National Congress at its 42nd Session held in Madras.—*The Indian National Congress, Resolutions* (All-India Congress Committee, Madras, 1928), pp. 7-10.

2. That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures such representation of the communities should be secured for the present, and if desired, by the reservation of seats in joint electorates on the basis of population in every Province and in the Central Legislature ;

Provided that reciprocal concessions in favour of Minorities may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any Province or Provinces, and the proportions so agreed upon for the Provinces shall be maintained in the representation of the two communities in the Central Legislature from the Provinces.

In the decision of the reservation of seats for the Punjab, the question of the representation of Sikhs as an important Minority will be given full consideration.

3. (*a*) That the proposal made by the Muslim leaders that reforms should be introduced in North-West Frontier Province and British Baluchistan on the same footing as in other Provinces is, in the opinion of the Congress, a fair and reasonable one and should be given effect to, care being taken that simultaneously with other measures of administrative reform an adequate system of judicial administration shall be introduced in the said Provinces.

(*b*) (i) That with regard to the proposal that Sind should be constituted into a separate Province, this Congress is of opinion that the time has come for the redistribution of Provinces on linguistic basis—a principle that has been adopted in the Constitution of the Congress.

(ii) This Congress is also of opinion that such readjustment of Provinces be immediately taken in hand and that any Province which demands such reconstitution on linguistic basis be dealt with accordingly.

(iii) This Congress is further of opinion that a beginning may be made by constituting Andhra, Utkal, Sind and Karnatak into separate Provinces.

4. That, in the future Constitution, liberty of conscience shall be guaranteed and no Legislature, Central or Provincial, shall have power to make any laws interfering with liberty of conscience.

' Liberty of Conscience ' means liberty of belief and worship, freedom of religious observances and association and freedom to carry on religious education and propaganda with due regard to the feelings of others and without interfering with similar rights of others.

5. That no Bill, Resolution, Motion or Amendment regarding inter-communal matters shall be moved, discussed or passed in any Legislature, Central or Provincial, if a three-fourths majority of the Members of either community affected thereby in that Legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment.

' Inter-communal matters ' means matters agreed upon as such by a Joint Standing Committee of both communities—of the Hindu and Moslem members of the Legislature concerned, appointed at the commencement of every session of the Legislature.

PART B. (*Religious and other Rights*)

This Congress resolves that :

1. Without prejudice to the rights that the Hindus and Mussulmans claim, the one to play music and conduct processions wherever they please and the other to slaughter cows for sacrifice or food wherever they please, the Mussulmans appeal to the Mussulmans to spare Hindu feelings as much as possible in the matter of the cow and the Hindus appeal to the Hindus to spare Mussulman feelings as much as possible in the matter of music before mosques.

And therefore this Congress calls upon both the Hindus and Mussulmans not to have recourse to violence or to law to prevent the slaughter of a cow or the playing of music before a mosque.

2. This Congress further resolves that every individual or group is at liberty to convert or reconvert another by argument or persuasion but no individual or group shall attempt to do so, or prevent its being done, by force, fraud or other unfair means such as the offering of material inducement. Persons under eighteen years of age should not be converted unless it be along with their parents or guardians. If any person under eighteen years of age is found stranded without his parents or guardian by persons of another faith he should be promptly handed over to persons of his own faith. There must be no secrecy as to the person, place, time and manner about any conversion or reconversion, nor should there be any demonstration of jubilation in support of any conversion or reconversion.

Whenever any complaint is made in respect of any conversion or reconversion, that it was effected in secrecy or by force, fraud or other unfair means, or whenever any person under eighteen years of age is converted, the matter shall be inquired into and decided by arbitrators who shall be appointed by the Working Committee either by name or under general regulations.

(2) *Nehru Committee Proposals regarding communal Representation as amended and adopted by the All-Parties National Convention, 22 December 1928 to 1 January 1929*[1]

There shall be joint mixed electorates throughout India for the House of Representatives and the Provincial Legislatures.

There shall be no reservation of seats for the House of Representatives except for Muslims in Provinces where they are in a minority and non-Muslims in the North-West Frontier Province. Such reservation will be in strict proportion to the Muslim population in every Province where they are in a minority and in proportion to the non-Muslim population in the North-West Frontier Province. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.

In the Provinces, (*a*) there shall be no reservation of seats for any community in the Punjab and Bengal ; *Provided that the franchise is based on adult suffrage ;* Provided *further* that the question of communal representation will be open for reconsideration if so desired by any

[1] *The Proceedings of the All-Parties National Convention* (All-Parties National Convention, Allahabad), pp. 27-8.

community after working the recommended system for 10 years ; (*b*) in Provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats ; (*c*) in the North-West Frontier Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

Reservation of seats, where allowed, shall be for a fixed period of 10 years ; provided that the question will be open for reconsideration after the expiration of that period if so desired by any community.

(3) *Resolution of the All-India Muslim Conference, 1 January 1929*[1]

Whereas, in view of India's vast extent and its ethnological, linguistic, administrative and geographical or territorial divisions, the only form of government suitable to Indian conditions is a federal system with complete autonomy and residuary powers vested in the constituent States, the Central Government having control only of such matters of common interest as may be specifically entrusted to it by the Constitution ;

And whereas it is essential that no Bill, resolution, motion or amendment regarding inter-communal matters be moved, discussed or passed by any Legislature, Central or Provincial, if a three-fourth majority of the members of either the Hindu or the Muslim community affected thereby in that Legislature oppose the introduction, discussion or passing of such Bill, resolution, motion or amendment ;

And whereas the right of Moslems to elect their representatives on the various Indian Legislatures through separate electorates is now the law of the land and Muslims cannot be deprived of that right without their consent ;

And whereas in the conditions existing at present in India and so long as those conditions continue to exist, representation in various Legislatures and other statutory self-governing bodies of Muslims through their own separate electorates is essential in order to bring into existence a really representative democratic Government ;

And whereas as long as Mussulmans are not satisfied that their rights and interests are adequately safeguarded in the Constitution, they will in no way consent to the establishment of joint electorates, whether with or without conditions ;

And whereas, for the purposes aforesaid, it is essential that Mussulmans should have their due share in the Central and Provincial Cabinets ;

And whereas it is essential that representation of Mussulmans in the various Legislatures and other statutory self-governing bodies should be based on a plan whereby the Muslim majority in those Provinces where Mussulmans constitute a majority of population shall in no way be affected and in the Provinces in which Mussulmans constitute a minority they shall have a representation in no case less than that enjoyed by them under the existing law ;

And whereas representative Muslim gatherings in all Provinces in India have unanimously resolved that with a view to provide adequate safeguards for the protection of Muslim interests in India as a whole,

[1] *Indian Statutory Commission Report*, 1930, vol. II, pp. 84-5.

Mussulmans should have the right of 33 per cent representation in the Central Legislature and this Conference entirely endorses that demand ;

And whereas on ethnological, linguistic, geographical and administrative grounds the Province of Sind has no affinity whatever with the rest of the Bombay Presidency and its unconditional constitution into a separate Province, possessing its own separate legislative and administrative machinery on the same lines as in other Provinces of India is essential in the interests of its people, the Hindu minority in Sind being given adequate and effective representation in excess of their proportion in the population, as may be given to Mussulmans in Provinces in which they constitute a minority of population ;

And whereas the introduction of constitutional reforms in the North-West Frontier Province and Baluchistan along such lines as may be adopted in other Provinces of India is essential not only in the interests of those Provinces but also of the constitutional advance of India as a whole, the Hindu minorities in those Provinces being given adequate and effective representation in excess of their proportion in population, as is given to the Muslim community in Provinces in which it constitutes a minority of the population ;

And whereas it is essential in the interests of Indian administration that provision should be made in the Constitution giving Muslims their adequate share along with other Indians in all Services of the State and on all statutory self-governing bodies, having due regard to the requirements of efficiency ;

And whereas, having regard to the political conditions obtaining in India it is essential that the Indian Constitution should embody adequate safeguards for protection and promotion of Muslim education, languages, religion, personal law and Muslim charitable institutions, and for their due share in grants-in-aid ;

And whereas it is essential that the Constitution should provide that no change in the Indian Constitution shall, after its inauguration, be made by the Central Legislature except with the concurrence of all the States constituting the Indian Federation ;

This Conference emphatically declares that no Constitution, by whomsoever proposed or devised, will be acceptable to Indian Mussulmans unless it conforms with the principles embodied in this resolution.

(4) *Mr Jinnah's Fourteen Points, 28 March 1929*[1]

Whereas the basic idea on which the All-Parties Conference was called in being and a Convention summoned at Calcutta during Christmas Week 1928 was that a scheme of reforms should be formulated and accepted and ratified by the foremost political organizations in the country as a National Pact ; and whereas the Report was adopted by the Indian National Congress only constitutionally for the one year ending 31st December 1929, and in the event of the British Parliament not accepting it within the time limit, the Congress stands committed to the policy and programme of Complete Independence by resort to civil disobedience

[1] Text of a resolution which Mr Jinnah intended to move at the meeting of the All-India Muslim League on 28 March 1929.—*The Indian Annual Register* (1929), vol. I, pp. 364-5. [Ed.]

and non-payment of taxes ; and whereas the attitude taken up by the Hindu Maha Sabha from the commencement through their representatives at the Convention was nothing short of an ultimatum, that if a single word in the Nehru Report in respect of the communal settlement was changed they would immediately withdraw their support to it ; and whereas the National Liberal Federation delegates at the Convention took up an attitude of benevolent neutrality, and subsequently in their open session at Allahabad, adopted a non-committal policy with regard to the Hindu-Muslim differences ; and whereas the non-Brahmin and Depressed Classes are entirely opposed to it ; and whereas the reasonable and moderate proposals put forward by the delegates of the All-India Muslim League at the Convention in modification were not accepted, the Muslim League is unable to accept the Nehru Report.[1]

The League after anxious and careful consideration most earnestly and emphatically lays down that no scheme for the future constitution of the government of India will be acceptable to Mussulmans of India until and unless the following basic principles are given effect to and provisions are embodied therein to safeguard their rights and interests :

(1) The form of the future Constitution should be federal with the residuary powers vested in the Provinces.

(2) A uniform measure of autonomy shall be granted to all Provinces.

(3) All Legislatures in the country and other elected bodies shall be constituted on the definite principle of adequate and effective representation of Minorities in every Province without reducing the majority in any Province to a minority or even equality.

(4) In the Central Legislature, Mussulman representation shall not be less than one third.

(5) Representation of communal groups shall continue to be by means of separate electorates as at present : provided it shall be open to any community, at any time, to abandon its separate electorate in favour of joint electorate.

(6) Any territorial redistribution that might at any time be necessary shall not in any way affect the Muslim majority in the Punjab, Bengal and the North-West Frontier Province.

(7) Full religious liberty, i.e. liberty of belief, worship and observance, propaganda, association and education, shall be guaranteed to all communities.

(8) No Bill or resolution or any part thereof shall be passed in any Legislature or any other elected body if three-fourths of the members of any community in that particular body oppose such a Bill, resolution or part thereof on the ground that it would be injurious to the interests of that community or in the alternative, such other method is devised as may be found feasible and practicable to deal with such cases.

(9) Sind should be separated from the Bombay Presidency.

(10) Reforms should be introduced in the North-West Frontier Province and Baluchistan on the same footing as in other Provinces.

(11) Provision should be made in the Constitution giving Muslims an adequate share, along with the other Indians, in all the Services of

[1] See pp. 243-4 above for the proposals made by the Nehru Committee. [Ed.]

the State and in local self-governing bodies having due regard to the requirements of efficiency.

(12) The Constitution should embody adequate safeguards for the protection of Muslim culture and for the protection and promotion of Muslim education, language, religion, personal laws and Muslim charitable institutions and for their due share in the grants-in-aid given by the State and by local self-governing bodies.

(13) No Cabinet, either Central or Provincial, should be formed without there being a proportion of at least one-third Muslim Ministers.

(14) No change shall be made in the Constitution by the Central Legislature except with the concurrence of the States constituting the Indian Federation.

The draft resolution also mentions an alternative to the above provision in the following terms :

That, in the present circumstances, representation of Mussulmans in the different Legislatures of the country and other elected bodies through the separate electorates is inevitable and further, the Government being pledged over and over again not to disturb this franchise so granted to the Muslim community since 1909 till such time as the Mussulmans chose to abandon it, the Mussulmans will not consent to joint electorates unless Sind is actually constituted into a separate Province and reforms in fact are introduced in the North-West Frontier Province and Baluchistan on the same footing as in other Provinces.

Further, it is provided that there shall be reservation of seats according to the Muslim population in the various Provinces ; but where Mussulmans are in a majority they shall not contest more seats than their population warrants.

The question of excess representation of Mussulmans over and above their population in Provinces where they are in a minority is to be considered hereafter.

(5) *The Indian Statutory Commission on the Influence of the Reforms on communal Rivalry, 27 May 1930*[1]

42. The question has been raised whether Hindu-Mohammedan tension is aggravated or assuaged by the prevailing system of communal representation, under which Moslem voters form a separate electoral roll and choose their own members (as the Sikhs also do in the Punjab), while non-Mohammedan electors are grouped in distinct constituencies and elect their own representatives. On the one hand it is contended that this separation actually reduces the chances of conflict, as the rival communities are not fighting against one another for the same seats, but each is concerned solely with selection from inside its own body. On the other hand it is argued that such an arrangement tends to encourage the appeal to communal sentiment, instead of developing political associations along the lines of a broader citizenship. There is a long and important history connected with the separate representation of Mohammedans which needs to be carefully studied before detailed proposals for the future can be discussed or put forward. But we may say at once that in our judgement communal representation cannot be

[1] *Indian Statutory Commission Report*, 1930, vol. I, pars. 42-3.

justly regarded as the reason for the communal tension we have been describing, and there is no solid ground for supposing that if communal representation were abolished communal strife would disappear. The true cause lies deeper and arises from conditions which are far more difficult to change than the mechanics of representation.

43. In so far as this tension is due to the constitutional situation, it is not to be explained by dwelling upon the operation of electoral arrangements, but is a manifestation of the anxieties and ambitions aroused in both communities by the prospect of India's political future. So long as authority was firmly established in British hands, and self-government was not thought of, Hindu-Moslem rivalry was confined within a narrower field. This was not merely because the presence of a neutral bureaucracy discouraged strife. A further reason was that there was little for members of one community to fear from the predominance of the other. The comparative absence of communal strife in the Indian States today may be similarly explained. Many who are well acquainted with conditions in British India a generation ago would testify that at that epoch so much good feeling had been engendered between the two sides that communal tension as a threat to civil peace was at a minimum. But the coming of the Reforms and the anticipation of what may follow them have given new point to Hindu-Moslem competition. A great part of the evidence given before us was on communal lines, and the same cleavage appears in the Reports of the Indian Committees that sat with us. The one community naturally lays claim to the rights of a majority and relies upon its qualifications of better education and greater wealth ; the other is all the more determined on those accounts to secure effective protection for its members, and does not forget that it represents the previous conquerors of the country. It wishes to be assured of adequate representation and of a full share of official posts.

Hence has arisen a situation which it is of the most urgent importance for the influences which operate on public opinion in India to relieve. But no cure is likely to be found by ascribing false causes to the disease. The true cause, as it seems to us, is the struggle for political power and for the opportunities which political power confers. We are fully alive to the arguments against communal representation, but we cannot think that it is the effective cause of this deplorable friction. At the same time we are no less clearly convinced that separate communal electorates serve to perpetuate political divisions on purely communal lines, and we have every sympathy with those who look forward to the day when a growing sense of common citizenship and a general recognition of the rights of Minorities will make such arrangements unnecessary.

(6) *Resolution of the Indian National Congress on fundamental Rights as amended by the All-India Congress Committee, 6-8 August 1931*[1]

This Congress is of opinion that to enable the masses to appreciate what ' Swaraj ', as conceived by the Congress, will mean to them, it is

[1] The original resolution was passed by the Karachi Session of the Indian National Congress on 29-31 March 1931. The above extract is taken from *The Indian National Congress, Resolutions, 1930-4* (All-India Congress Committee, Allahabad), pp. 119-22.

desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any Constitution which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide, for the following :

Fundamental Rights and Duties

1. (i) Every citizen of India has the right of free expression of opinion, the right of free association and combination, and the right to assemble peacefully and without arms, for purposes not opposed to law or morality.

(ii) Every citizen shall enjoy freedom of conscience and the right freely to profess and practise his religion, subject to public order and morality.

(iii) The culture, language and script of the Minorities and of the different linguistic areas shall be protected.

(iv) All citizens are equal before the law, irrespective of religion, caste, creed or sex.

(v) No disability attaches to any citizen, by reason of his or her religion, caste, creed or sex, in regard to public employment, office of power or honour, and in the exercise of any trade or calling.

(vi) All citizens have equal rights and duties in regard to wells, tanks, roads, schools and places of public resort, maintained out of State or local funds, or dedicated by private persons for the use of the general public.

(vii) Every citizen has the right to keep and bear arms, in accordance with regulations and reservations made in that behalf.

(viii) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered, or confiscated, save in accordance with law.

(ix) The State shall observe neutrality in regard to all religions.

(x) The franchise shall be on the basis of universal adult suffrage.

(xi) The State shall provide for free and compulsory primary education.

(xii) The State shall confer no titles.

(xiii) There shall be no capital punishment.

(xiv) Every citizen is free to move throughout India and to stay and settle in any part thereof, to acquire property and to follow any trade or calling, and to be treated equally with regard to legal prosecution or protection in all parts of India.

Labour

2. (*a*) The organization of economic life must conform to the principle of justice, to the end that it may secure a decent standard of living.

(*b*) The State shall safeguard the interests of industrial workers and shall secure for them, by suitable legislation and in other ways, a living wage, healthy conditions of work, limited hours of labour, suitable

machinery for the settlement of disputes between employers and workmen, and protection against the economic consequences of old age, sickness, and unemployment.

3. Labour to be freed from serfdom and conditions bordering on serfdom.

4. Protection of women workers, and specially adequate provision for leave during maternity period.

5. Children of school-going age shall not be employed in mines and factories.

6. Peasants and workers shall have the right to form unions to protect their interests.

Taxation and Expenditure

7. The system of land tenure and revenue and rent shall be reformed and an equitable adjustment made of the burden on agricultural land, immediately giving relief to the smaller peasantry, by a substantial reduction of agricultural rent and revenue now paid by them, and in case of uneconomic holdings, exempting them from rent so long as necessary, with such relief as may be just and necessary to holders of small estates affected by such exemption or reduction in rent, and to the same end, imposing a graded tax on net incomes from land above a reasonable minimum.

8. Death duties on a graduated scale shall be levied on property above a fixed minimum.

9. There shall be a drastic reduction of military expenditure so as to bring it down to at least one half of the present scale.

10. Expenditure and salaries in civil departments shall be largely reduced. No servant of the State, other than specially employed experts and the like, shall be paid above a certain fixed figure, which should not ordinarily exceed Rs 500 per month.

11. No duty shall be levied on salt manufactured in India.

Economic and Social Programme

12. The State shall protect indigenous cloth ; and for this purpose pursue the policy of exclusion of foreign cloth and foreign yarn from the country and adopt such other measures as may be found necessary. The State shall also protect other indigenous industries, when necessary, against foreign competition.

13. Intoxicating drinks and drugs shall be totally prohibited, except for medicinal purposes.

14. Currency and exchange shall be regulated in the national interest.

15. The State shall own or control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport.

16. Relief and agricultural indebtedness and control of usury, direct and indirect.

17. The State shall provide for the military training of citizens so as to organize a means of national defence apart from the regular military forces.

(7) *The Congress Scheme for a communal Settlement, 28 October 1931*[1]

However much it may have failed in the realization, the Congress has, from its very inception, set up pure nationalism as its ideal. It has endeavoured to break down communal barriers. The following Lahore resolution was the culminating point in its advance towards nationalism :

> 'In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions, the Congress believing that in an independent India communal questions can only be solved on strictly national lines. But as the Sikhs in particular, and the Muslims and the other Minorities in general, have expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, this Congress assured the Sikhs, the Muslims and other Minorities that no solution thereof in any future Constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned.'

Hence, the Congress is precluded from setting forth any communal solution of the communal problem. But at this critical juncture in the history of the nation, it is felt that the Working Committee should suggest for adoption by the country a solution though communal in appearance, yet as nearly national as possible and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme :

1. (*a*) The article in the Constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments.

(*b*) Personal laws shall be protected by specific provisions to be embodied in the Constitution.

(*c*) Protection of political and other rights of minority communities in the various Provinces shall be the concern, and be within the jurisdiction, of the Federal Government.

2. The franchise shall be extended to all adult men and women.

(NOTE A. The Working Committee is committed to adult franchise by the Karachi resolution of the Congress and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.)

3. (*a*) Joint electorates shall form the basis of representation in the future Constitution of India.

(NOTE B. Wherever possible the electoral circles shall be so determined as to enable every community, if it so desires, to secure its proportionate share in the Legislature.)[2]

(*b*) That for Hindus in Sind, the Muslims in Assam and the

[1] Memorandum circulated by Mahatma Gandhi for consideration by the Committee.—*The Indian Round Table Conference (Second Session), Proceedings of the Minorities Committee*, Appendix 1.

[2] Note B is not part of the scheme but has been added by me as not being inconsistent with the scheme.—M.K.G.

Sikhs in the Punjab and the North-West Frontier Province and for Hindus and Muslims in any Province where they are less than 25 per cent of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the Public Service as well as to the principle of equal opportunity to all communities for a fair share in the Public Services of the country.

5. In the formation of Federal and Provincial Cabinets interests of minority communities should be recognized by convention.

6. The North-West Frontier Province and Baluchistan shall have the same form of government and administration as other Provinces.

7. Sind shall be constituted into a separate Province, provided that the people of Sind are prepared to bear the financial burden of the separated Province.

8. The future Constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India.

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism. Whilst on the one hand the Working Committee hopes that the whole Nation will endorse the scheme, on the other, it assures those who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore resolution, accept without reservation any other scheme, if it commands the acceptance of all the parties concerned.

(8) *Provisions for a Settlement of the communal Problem, put forward jointly by Muslims, Depressed Classes, Indian Christians, Anglo-Indians and Europeans for Consideration by the Minorities Committee of the second Session of the Indian Round Table Conference*[1]

1. No person shall by reason of his origin, religion, caste or creed, be prejudiced in any way in regard to public employment, office of power or honour, or with regard to enjoyment of his civic rights and the exercise of any trade or calling.

2. Statutory safeguards shall be incorporated in the Constitution with a view to protect against enactments of the Legislature of discriminatory laws affecting any community.

3. Full religious liberty, that is, full liberty of belief, worship observances, propaganda, associations and education, shall be guaranteed to all communities subject to the maintenance of public order and morality.

No person shall merely by change of faith lose any civic right or privilege, or be subject to any penalty.

4. The right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments with the right to exercise their religion therein.

[1] Memorandum circulated by the signatories for consideration by the Minorities Committee.—*The Indian Round Table Conference* (*Second Session*), *Proceedings of the Minorities Committee*, Appendix III.

5. The Constitution shall embody adequate safeguards for the protection of religion, culture and personal law, and the promotion of education, language, charitable institutions of the minority communities and for their due share in grants-in-aid given by the State and by the self-governing bodies.

6. Enjoyment of civic rights by all citizens shall be guaranteed by making any act or omission calculated to prevent full enjoyment an offence punishable by law.

7. In the formation of Cabinets in the Central Government and Provincial Governments, so far as possible, members belonging to the Mussulman community and other Minorities of considerable number shall be included by convention.

8. There shall be Statutory Departments under the Central and Provincial Governments to protect minority communities and to promote their welfare.

9. All communities at present enjoying representation in any Legislature through nomination or election shall have representation in all Legislatures through separate electorates and the Minorities shall have not less than the proportion set forth in the Annexure but no majority shall be reduced to a minority or even an equality. Provided that after a lapse of ten years it will be open to Muslims in the Punjab and Bengal and any minority communities in any other Provinces to accept joint electorates, or joint electorates with reservation of seats, by the consent of the community concerned. Similarly after the lapse of ten years it will be open to any minority in the Central Legislature to accept joint electorates with or without reservation of seats with the consent of the community concerned.

With regard to the Depressed Classes no change to joint electorates and Reserved seats shall be made until after 20 years' experience of separate electorates and until direct adult suffrage for the community has been established.

10. In every Province and in connexion with the Central Government a Public Service Commission shall be appointed, and the recruitment to the Public Services, except the proportion, if any, reserved to be filled by nomination by the Governor-General and the Governors, shall be made through such Commission in such a way as to secure a fair representation to the various communities consistently with the considerations of efficiency and the possession of the necessary qualifications. Instructions to the Governor-General and the Governors in the Instrument of Instructions with regard to recruitment shall be embodied to give effect to this principle, and for that purpose to review periodically the composition of the Services.

11. If a Bill is passed which, in the opinion of two-thirds of the members of any Legislature representing a particular community, affects their religion or social practice based on religion, or in the case of fundamental rights of the subjects if one-third of the members object, it shall be open to such members to lodge their objection thereto, within a period of one month of the Bill being passed by the House, with the President of the House who shall forward the same to the Governor-General or the Governor, as the case may be, and he shall thereupon suspend the operation of that Bill for one year, upon the expiry of which period he shall

remit the said Bill for further consideration by the Legislature. When such Bill has been further considered by the Legislature and the Legislature concerned has refused to revise or modify the Bill so as to meet the objection thereto, the Governor-General or the Governor, as the case may be, may give or withhold his assent to it in the exercise of his discretion, provided, further, that the validity of such Bill may be challenged in the Supreme Court by any two members of the denomination affected thereby on the grounds that it contravenes one of their fundamental rights.

Special Claims of Mussulmans

A. The North-West Frontier Province shall be constituted a Governor's Province on the same footing as other Provinces with due regard to the necessary requirements for the security of the Frontier.

In the formation of the Provincial Legislature the nominations shall not exceed more than 10 per cent of the whole.

B. Sind shall be separated from the Bombay Presidency and made a Governor's Province similar to and on the same footing as other Provinces in British India.

C. Mussulman representation in the Central Legislature shall be one-third of the total number of the House, and their representation in the Central Legislature shall not be less than the proportion set forth in the Annexure.

Special Claims of the Depressed Classes

A. The Constitution shall declare invalid any custom or usage by which any penalty or disadvantage or disability is imposed upon or any discrimination is made against any subject of the State in regard to the enjoyment of civic rights on account of Untouchability.

B. Generous treatment in the matter of recruitment to Public Service and the opening of enlistment in the Police and Military Service.

C. The Depressed Classes in the Punjab shall have the benefit of the Punjab Land Alienation Act extended to them.

D. Right of Appeal shall lie to the Governor or Governor-General for redress of prejudicial action or neglect of interest by any Executive Authority.

E. The Depressed Classes shall have representation not less than set forth in the Annexure.

Special Claims of the Anglo-Indian Community

A. Generous interpretation of the claims admitted by sub-Committee No. VIII (Services) to the effect that in recognition of the peculiar position of the community special consideration should be given to the claim for public employment, having regard to the maintenance of an adequate standard of living.

B. The right to administer and control its own educational institutions, i.e. European education, subject to the control of the Minister.

Provisions for generous and adequate grants-in-aid and scholarships on the basis of present grants.

C. Jury rights equal to those enjoyed by other communities in India unconditionally of proof of legitimacy and descent and the right of accused persons to claim trial by either a European or an Indian jury.

Special Claims of the European Community

A. Equal rights and privileges to those enjoyed by Indian-born subjects in all industrial and commercial activities.

B. The maintenance of existing rights in regard to procedure of criminal trials, and any measure or Bill to amend, alter, or modify such a procedure cannot be introduced except with the previous consent of the Governor-General.

Agreed by :

HIS HIGHNESS THE AGA KHAN (Muslims)
DR AMBEDKAR (Depressed Classes)
RAO BAHADUR PANNIR SELVAM (Indian Christians)
SIR HENRY GIDNEY (Anglo-Indians)
SIR HUBERT CARR (Europeans)

Explanatory Memorandum to Appendix III

1. The suggested details for community representation have not been agreed by the Hindus or the Sikhs, but the full representation claimed by the latter in the Central Legislature is provided for.

2. The proposed distribution of seats for the different Minorities constitutes a whole scheme and the detailed proposals cannot be separated one from another.

3. This distribution of seats follows the principle that in no case is the majority community to be reduced to the position of a minority or even equality.

4. No representation is provided for Commerce, Landlords, Industry, Labour, etc., it being assumed that these seats are ultimately communal and that communities desiring special representation for these interests may do so out of the communal quota.

5. The allowance of $33\frac{1}{3}$ per cent representation to Muslims in the Central Legislature is based on the assumption that 26 per cent shall be from British India and at least 7 per cent by convention out of the quota assigned to the Indian States.

6. In the Punjab the suggested common sacrifice by the Muslims, Caste Hindus and the Depressed Classes, would permit of a weightage of 54 per cent being given to the Sikhs, giving them representation of 20 per cent in the Legislature.

7. The proposals may be taken as being acceptable to well over 115 millions of people, or about 46 per cent of the population of India.

(9) *Speech by Gandhiji at a meeting of the Minorities Committee, 13 November 1931*[1]

Prime Minister, and fellow delegates, it is not without very considerable hesitation and shame that I take part in the discussion on the Minorities question. I have not been able to read, with the care and attention that it deserves, the memorandum sent to the delegates on

[1] *The Indian Round Table Conference (Second Session), Proceedings of the Minorities Committee* (13 November 1931), pp. 1383-5. See also pp. 233-6 above. [Ed.]

behalf of certain Minorities and received this morning. Before I offer a few remarks on that memorandum, with your permission and with all the deference and respect that are your due, I would express my dissent from the view that you put before this Committee, that the inability to solve the communal question was hampering the progress of Constitution-building, and that it was an indispensable condition prior to the building of any such Constitution. I expressed at an early stage of the sittings of this Committee that I did not share that view. The experience that I have since gained has confirmed me in that view and, if you will pardon me for saying so, it was because of the emphasis that was laid last year and repeated this year upon this difficulty, that the different communities were encouraged to press with all the vehemence at their command their own respective views. It would have been against human nature if they had done otherwise. All of them thought that this was the time to press forward their claims for all they were worth, and I venture to suggest again that this very emphasis has defeated the purpose which I have no doubt it had in view. This is the reason why we have failed to arrive at an agreement. I, therefore, associate myself entirely with the view expressed by Sir Chimanlal Setalvad, that it is not this question which is the fulcrum, it is not this question which is the central fact, but the central fact is the Constitution-building.

I am quite certain that you did not convene this Round Table Conference and bring us all 6,000 miles away from homes and occupations to settle the communal question, but you convened us, you made deliberate declarations that we were invited to come here, to share the process of Constitution-building. You declared that before we went away from your hospitable shores, we should have the certain conviction that we had built up an honourable and a respectable framework for the freedom of India, and that it awaited only the *imprimatur* of the approval of the House of Commons and the House of Lords.

Now, at the present moment, we are face to face with a wholly different situation, namely, that, because there is no communal settlement agreed to by us, there is to be no building of the Constitution, and that, as the last resort and as the last touch, you will announce the policy of His Majesty's Government in connexion with the Constitution and all the matters that may arise from it. I cannot help feeling that it would be a sorry ending to a Conference which was brought into being with so much trumpeting and with so much hope excited in the minds and in the breasts of many people.

Coming to this document, I accept the thanks that have been given to me by Sir Hubert Carr. Had it not been for the remarks that I made when I shouldered that burden, and had it not been for my utter failure to bring about a solution, Sir Hubert Carr rightly says he would not have found the very admirable solution that he has been able, in common with the other Minorities, to present to this Committee for consideration and finally for the consideration and approval of His Majesty's Government.

I will not deprive Sir Hubert Carr and his associates of the feeling of satisfaction that evidently actuates them, but, in my opinion, what they have done is to sit by the carcass, and they have performed the laudable feat of dissecting that carcass.

As representing the predominant political organization in India, I have no hesitation in saying to His Majesty's Government and to those friends who seek to represent the Minorities mentioned against their names, and indeed to the whole world, that this scheme is not one designed to achieve responsible government, though undoubtedly, it is designed to share power with the bureaucracy.

If that is the intention—and it is the intention running through the whole of that document—I wish them well, and Congress is entirely out of it. The Congress will wander, no matter how many years, in the wilderness rather than lend itself to a proposal under which the hardy tree of freedom and responsible government can never grow.

I am astonished that Sir Hubert Carr should tell us that they have evolved a scheme which, being designed only for a temporary period, would not damage the cause of nationalism, but at the end of ten years we would all find ourselves hugging one another and throwing ourselves into one another's laps. My political experience teaches me a wholly different lesson. If this responsible government, whenever it comes, is to be inaugurated under happy auspices, the nation should not undergo the process of vivisection to which this scheme subjects it ; it is a strain which no national Government can possibly bear.

There is the coping stone to this structure, and I am surprised, Mr Prime Minister, that you allowed yourself to mention this as if it were an indisputable fact, namely, that the proposals may be taken as being acceptable to well over 115 millions of people, or about 46 per cent of the population of India. You had a striking demonstration of the inaccuracy of this figure. You have had, on behalf of the women, a complete repudiation of special representation, and as they happen to be one-half of the population of India, this 46 per cent is somewhat reduced. But not only that : the Congress may not be a very powerful organization, but I have not hesitated to make the claim, and I am not ashamed to repeat the claim, that the Congress claims to represent 85 per cent or 95 per cent of the population not merely of British India but of the whole of India. Subject to all the questions that may be raised, I repeat the claim with all the emphasis at my command that the Congress, by right of service, claims to represent that population which is called the agricultural population of India. I would accept the challenge, if the Government were to issue the challenge, that we should have a referendum in India and you would immediately find whether the Congress does not represent them. But I go a step further. At the present moment, if you were to examine the records of the prisons of India, you would find that the Congress represented there, and represents on its register, a very large number of Mussulmans. Several thousand Mussulmans went to gaol last year under the banner of the Congress. The Congress today has several thousand Mussulmans on its register. The Congress has thousands of Untouchables on its register. The Congress has Indian Christians also on its register. I do not know that there is a single community which is not represented on the Congress register. With all deference to the Nawab Saheb of Chhatari, even landlords and even mill-owners and millionaires are represented there. I admit that they are coming to the Congress slowly, cautiously, but the Congress is trying to serve them also. The Congress undoubtedly

represents labour. Therefore, this claim that the proposals set forth in this memorandum are acceptable to well over 115,000,000 of people needs to be taken with a very great deal of reservation and caution.

One word more and I shall have done. You have had presented to you and circulated to the members, I hope, the Congress proposal in connexion with the communal problem.[1] I venture to submit that of all the schemes that I have seen it is the most workable scheme, but I may be in error there. I admit that it has not commended itself to the representatives of the communities at this table, but it has commended itself to the representatives of these very classes in India. It is not the creation of one brain, but it is the creation of a Committee on which various important parties were represented.

Therefore you have got on behalf of the Congress that scheme ; but the Congress has also suggested that there should be an impartial arbitration. Through arbitration all over the world people have adjusted their differences, and the Congress is always open to accept any decision of an arbitration court. I have myself ventured to suggest that there might be appointed by the Government a judicial tribunal which would examine this case and give its decision. But if none of these things are acceptable to any of us, and if this is the *sine qua non* of any Constitution-building, then I say it will be much better for us that we should remain without so-called responsible government than that we should accept this claim.

I would like to repeat what I have said before, that, while the Congress will always accept any solution that may be acceptable to the Hindus, the Muhammadans and the Sikhs, Congress will be no party to special reservation or special electorates for any other Minorities. The Congress will always endorse clauses or reservations as to fundamental rights and civil liberty. It will be open to everybody to be placed on the voters' roll and to appeal to the common body of the electorates.

In my humble opinion the proposition enunciated by Sir Hubert Carr is the very negation of responsible government, the very negation of nationalism. If he says that if you want a live European on the Legislature then he must be elected by the Europeans themselves, well, heaven help India if India has to have representatives elected by these several, special, cut-up groups. That European will serve India as a whole, and that European only, who commands the approval of the common electorate and not the mere Europeans. This very idea suggests that the responsible government will always have to contend against these interests which will always be in conflict against the national spirit —against this body of 85 per cent of the agricultural population. To me it is an unthinkable thing. If we are going to bring into being responsible government and if we are going to get real freedom, than I venture to suggest that it should be the proud privilege and the duty of every one of these so-called special classes to seek entry into the Legislatures through this open door, through the election and approval of the common body of electorates. You know that Congress is wedded to adult suffrage, and under adult suffrage it will be open to all to be placed on the voters' list. More than that nobody can ask.

One word more as to the so-called Untouchables.

[1] See pp. 251-2 above. [Ed.]

I can understand the claims advanced by other Minorities, but the claims advanced on behalf of the Untouchables, that to me is the 'unkindest cut of all'. It means the perpetual bar sinister. I would not sell the vital interests of the Untouchables even for the sake of winning the freedom of India. I claim myself in my own person to represent the vast mass of the Untouchables. Here I speak not merely on behalf of the Congress, but I speak on my own behalf, and I claim that I would get, if there was a referendum of the Untouchables, their vote, and that I would top the poll. And I would work from one end of India to the other to tell the Untouchables that separate electorates and separate reservation is not the way to remove this bar sinister, which is the shame, not of them, but of orthodox Hinduism.

Let this Committee and let the whole world know that today there is a body of Hindu reformers who are pledged to remove this blot of Untouchability. We do not want on our register and on our census Untouchables classified as a separate class. Sikhs may remain as such in perpetuity, so may Muhammadans, so may Europeans. Will Untouchables remain in perpetuity? I would far rather that Hinduism died than that Untouchability lived. Therefore, with all my regard for Dr Ambedkar, and for his desire to see the Untouchables uplifted, with all my regard for his ability, I must say in all humility that the great wrong under which he has laboured and perhaps the bitter experiences that he has undergone have for the moment warped his judgement. It hurts me to have to say this, but I would be untrue to the cause of the Untouchables, which is as dear to me as life itself, if I did not say it. I will not bargain away their rights for the kingdom of the whole world. I am speaking with a due sense of responsibility, and I say that it is not a proper claim which is registered by Dr Ambedkar when he seeks to speak for the whole of the Untouchables of India. It will create a division in Hinduism which I cannot possibly look forward to with any satisfaction whatsoever. I do not mind Untouchables, if they so desire, being converted to Islam or Christianity. I should tolerate that, but I cannot possibly tolerate what is in store for Hinduism if there are two divisions set forth in the villages. Those who speak of the political rights of Untouchables do not know their India, do not know how Indian society is today constructed, and therefore I want to say with all the emphasis that I can command that if I was the only person to resist this thing I would resist it with my life.

(10) *Statement issued by Mr Ramsay MacDonald, Prime Minister, at the time of the Publication of the Communal Award, 16 August 1932*

Not only as the Prime Minister, but as a friend of India who has for the last two years taken a special interest in the questions of Minorities I feel that I ought to add a word or two of explanation to the extremely important decision on communal representation that the Government are announcing today.

We never wished to intervene in the communal controversies of India. We made that abundantly clear during both the sessions of the Round Table Conference when we strove hard to get Indians to settle this matter between themselves. We have realized from the very first

that any decision that we may make is likely, to begin with at any rate, to be criticized by every community purely from the point of view of its own complete demands, but we believe that in the end considerations of Indian needs will prevail and all communities will see that their duty is to co-operate in working the new Constitution which is to give India a new place in the British Commonwealth of Nations.

Settlement subject to Revision by Agreement

Our duty was plain. As the failure of the communities to agree amongst themselves has placed an almost insurmountable obstacle in the way of any constitutional development, it was incumbent upon Government to take action in accordance, therefore, with the pledges that I gave on behalf of the Government at the Round Table Conference in response to repeated appeals from representative Indians and in accordance with the statement to British Parliament and approved by it. Government are today publishing a scheme of representation in Provincial Assemblies that they intend in due course to lay before Parliament unless in the meanwhile the communities themselves agree upon a better plan.

We should be only too glad if, at any stage before the proposed Bill becomes law, the communities can reach an agreement amongst themselves. But guided by the past experience, Government are convinced that no further negotiations will be of any advantage, and they can be no party to them. They will, however, be ready and willing to substitute for their scheme any scheme whether in respect of any one or more of Governor's Provinces or in respect of the whole of British India that is generally agreed and accepted by all the parties affected.

The Case for separate Electorates

In order to appreciate the Government's decision, it is necessary to remember the actual conditions in which it is being given. For many years past, separate electorates, namely, the grouping of particular categories of voters in territorial constituencies by themselves has been regarded by minority communities as an essential protection for their rights. In each of the recent stages of constitutional development, separate electorates have consequentially found a place. However much Government may have preferred a uniform system of joint electorates, they found it impossible to abolish the safeguards to which Minorities still attach vital importance. It would serve no purpose to examine the causes which in the past have led to this state of affairs. I am rather thinking of the future. I want to see the greater and the smaller communities working together in peace and amity so that there will be no further need for a special form of protection. In the meantime, however, Government have to face facts as they are, and must maintain this exceptional form of representation.

The Position of the Depressed Classes

There are two features of the decision to which I must allude. One has to do with the Depressed Classes and the other with the representation of women. Government would be quite unable to justify a scheme which omitted to provide what is really requisite for either.

Our main object in the case of the Depressed Classes has been while

securing to them the spokesmen of their own choice in the Legislatures of the Provinces where they are found in large numbers, at the same time to avoid electoral arrangements which would perpetuate their segregation. Consequently, Depressed Class voters will vote in general Hindu constituencies and an elected member in such a constituency will be influenced by his responsibility to this section of the electorate, but for the next 20 years there will also be a number of special seats filled from special Depressed Class electorates in the areas where these voters chiefly prevail. The anomaly of giving certain members of the Depressed Classes two votes is abundantly justified by the urgent need of securing that their claims should be effectively expressed and the prospects of improving their actual condition promoted.

Women's Rights

As regards women voters, it has been widely recognized in recent years that the women's movement in India holds one of the keys of progress. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated and influential citizens. There are undoubtedly serious objections to extending to the representation of women the communal method, but if seats are to be reserved for women as such and woman members are to be fairly distributed among the communities, there is, in the existing circumstances, no alternative.

With this explanation, I commend the scheme to Indian communities as a fair and honest attempt to hold the balance between the conflicting claims in relation to the existing position in India. Let them take it though it may not for the moment satisfy the full claims of any of them as a workable plan for dealing with the question of representation in the next period of India's constitutional development. Let them remember, when examining the scheme, that they themselves failed when pressed again and again to produce to us some plan which would give general satisfaction.

Communal Co-operation and Condition of Progress

In the end, only Indians themselves can settle this question. The most that Government can hope for is that their decision will remove an obstacle from the path of constitutional advance and will thus enable Indians to concentrate their attention upon solving the many issues that still remain to be decided in the field of constitutional advance. Let leaders of all Indian communities show, at this critical moment in India's constitutional development, their appreciation of the fact that communal co-operation is a condition of progress and that it is their special duty to put upon themselves the responsibility of making the new Constitution work.

(11) *The Communal Award by His Majesty's Government, released on 16 August 1932*[1]

In the statement made by the Prime Minister on 1st December last[2] on behalf of His Majesty's Government at the close of the second session

[1] Cmd. 4147 of 1932.
[2] See pp. 236-9 above. [Ed.]

of the Round Table Conference, which was immediately afterwards endorsed by both Houses of Parliament, it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal questions which the Conference had failed to solve His Majesty's Government were determined that India's constitutional advance should not on that account be frustrated, and that they would remove this obstacle by devising and applying themselves a provisional scheme.

2. On the 19th March last His Majesty's Government, having been informed that the continued failure of the communities to reach agreement was blocking the progress of the plans for the framing of a new Constitution, stated that they were engaged upon a careful re-examination of the difficult and controversial questions which arise. They are now satisfied that without a decision of at least some aspects of the problems connected with the position of Minorities under the new Constitution, no further progress can be made with the framing of the Constitution.

3. His Majesty's Government have accordingly decided that they will include provisions to give effect to the scheme set out below in the proposals relating to the Indian Constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for the representation of the British Indian communities in the Provincial Legislatures, consideration of representation in the Legislature at the Centre below deferred for the reason given in paragraph 20 below. The decision to limit the scope of the scheme implies no failure to realize that the framing of the Constitution will necessitate the decision of a number of the problems of great importance to Minorities, but has been taken in the hope that once a pronouncement has been made upon the basic questions of method and proportions of representation the communities themselves may find it possible to arrive at a *modus vivendi* on other communal problems, which have not as yet received the examination they require.

4. His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to the revision of their decision, and will not be prepared to give consideration to any representation aimed at securing the modification of it which is not supported by all the parties affected. But they are most desirous to close no door to an agreed settlement should such happily be forthcoming. If, therefore, before a new Government of India Act has passed into law, they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme, either in respect of any one or more of the Governors' Provinces or in respect of the whole of British India, they will be prepared to recommend to Parliament that that alternative should be substituted for the provisions now outlined.

5. Seats in the Legislative Councils in the Governors' Provinces, or in the Lower House if there is an Upper Chamber, will be allocated as shown in the annexed table.

6. Election to the seats allotted to Muhammadan, European and Sikh constituencies will be by voters voting in separate communal electorates covering between them the whole area of the Province (apart

from any portions which may in special cases be excluded from the electoral area as ' backward ').

Provision will be made in the Constitution itself to empower a revision of this electoral arrangement (and the other similar arrangements mentioned below) after 10 years with the assent of the communities affected, for the ascertainment of which suitable means will be devised.

7. All qualified electors, who are not voters either in a Muhammadan, Sikh, Indian Christian (see paragraph 10 below), Anglo-Indian (see paragraph 11 below) or European constituency, will be entitled to vote in a general constituency.

8. Seven seats will be reserved for Mahrattas in certain selected plural member general constituencies in Bombay.

9. Members of the ' Depressed Classes ' qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely, by this means alone, to secure any adequate representation in the Legislature, a number of special seats will be assigned to them as shown in the table. These seats will be filled by election from special constituencies in which only members of the ' Depressed Classes ' electorally qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the Depressed Classes are most numerous, and that, except in Madras, they should not cover the whole area of the Province.

In Bengal it seems possible that in some general constituencies a majority of the voters will belong to the Depressed Classes. Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special Depressed Class constituencies in that Province. It is intended to secure that the Depressed Classes should obtain not less than 10 seats in the Bengal Legislature.

The precise definition in each Province of those who (if electorally qualified) will be entitled to vote in the special Depressed Class constituencies has not yet been finally determined. It will be based as a rule on the general principles advocated in the Franchise Committee's Report.[1] Modification may, however, be found necessary in some Provinces in Northern India where the application of the general criteria of Untouchability might result in a definition unsuitable in some respects to the special conditions of the Province.

His Majesty's Government do not consider that these special Depressed Classes constituencies will be required for more than a limited time. They intend that the Constitution shall provide that they shall come to an end after 20 years if they have not previously been abolished under the general powers of electoral revision referred to in paragraph 6.

10. Election to the seats allotted to Indian Christians will be by voters voting in separate communal electorates. It seems almost certain that practical difficulties will, except possibly in Madras, prevent the formation of Indian Christian constituencies covering the whole area of the Province, and that accordingly special Indian Christian constituencies will have to be formed only in one or two selected areas in the Province. Indian Christian voters in these areas will not vote

[1] *Indian Franchise Committee Report* (1932), ch. x. [Ed.]

in a general constituency. Indian Christian voters outside these areas will vote in a general constituency. Special arrangements may be needed in Bihar and Orissa, where a considerable proportion of the Indian Christian community belongs to the aboriginal tribes.

11. Election to the seats allotted to Anglo-Indians will be by voters voting in separate communal electorates. It is at present intended, subject to investigation of any practical difficulties that may arise, that the Anglo-Indian constituencies shall cover the whole area of each Province, a postal ballot being employed ; but no final decision has yet been reached.

12. The method of filling the seats assigned for representatives from backward areas is still under investigation, and the number of seats so assigned should be regarded as provisional pending a final decision as to the constitutional arrangements to be made in relation to such areas.

13. His Majesty's Government attach great importance to securing that the new Legislatures should contain at least a small number of women members. They feel that at the outset this object could not be achieved without creating a certain number of seats specially allotted to women. They also feel that it is essential that women members should not be drawn disproportionately from one community. They have been unable to find any system which would avoid this risk, and would be consistent with the rest of the scheme for representation which they have found it necessary to adopt, except that of limiting the electorate for each special women's seat to voters from one community. The special women's seats have accordingly been specifically divided, as shown in the table, between the various communities. The precise electoral machinery to be employed in these special constituencies is still under consideration.

14. The seats allotted to ' Labour ' will be filled from non-communal constituencies. The electoral arrangements have still to be determined, but it is likely that in most Provinces the Labour constituencies will be partly trade union and partly special constituencies as recommended by the Franchise Committee.

15. The special seats allotted to Commerce and Industry, Mining and Planting will be filled by election through Chambers of Commerce and various Associations. The details of the electoral arrangements for these seats must await further investigation.

16. The special seats allotted to landholders will be filled by election by special landholders' constituencies.

17. The method to be employed for election to the University seats is still under consideration.

18. His Majesty's Government have found it impossible in determining these questions of representation in the Provincial Legislatures to avoid entering into considerable detail. There remains, nevertheless, the determination of the constituencies. They intend that this task should be undertaken in India as early as possible.

It is possible that in some instances delimitation of constituencies might be materially improved by slight variations from the numbers of seats now given. His Majesty's Government reserve the right to make such slight variations, for such purpose, provided that they would not materially affect the essential balance between communities. No such

variations will, however, be made in the case of Bengal and the Punjab.

19. The question of the composition of Second Chambers in the Provinces has so far received comparatively little attention in the constitutional discussions and requires further consideration before a decision is reached as to which Provinces shall have a Second Chamber or a scheme is drawn up for their composition.

His Majesty's Government consider that the composition of the Upper House in a Province should be such as not to disturb in any essential the balance between the communities resulting from the composition of the Lower House.

20. His Majesty's Government do not propose at present to enter into the question of the size and composition of the Legislature at the Centre, since this involves among other questions that of representation of the Indian States which still needs further discussion. They will, of course, when considering the composition, pay full regard to the claims of all communities for adequate representation therein.[1]

21. His Majesty's Government have already accepted the principle that Sind should be constituted a separate Province, if satisfactory means of financing it can be found. As the financial problems involved still have to be reviewed in connexion with other problems of federal finance, His Majesty's Government have thought preferable to include, at this stage, figures for a Legislature for the existing Province of Bombay, in addition to the schemes for separate Legislatures for Bombay Presidency proper and Sind.

22. The figures given for Bihar and Orissa relate to the existing Province. The question of constituting a separate Province of Orissa is still under investigation.

23. The inclusion in the table of figures relating to a Legislature for the Central Provinces including Berar does not imply that any decision has yet been reached regarding the future constitutional position of Berar.

London,
4th August 1932

(12) *The Poona Pact, 25 September 1932*[2]

(1) There shall be seats reserved for the Depressed Classes out of the general electorate seats in the Provincial Legislatures as follows :

Madras, 30 ; Bombay with Sind, 15 ; Punjab, 8 ; Bihar and Orissa, 18 ; Central Provinces, 20 ; Assam, 7 ; Bengal, 30 ; United Provinces, 20 ; Total, 148.

These figures are based on the total strength of the Provincial Councils, announced in the Prime Minister's decision.[3]

(2) Election to these seats shall be by joint electorates subject, however, to the following procedure :

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will

[1] See p. 266 below. [Ed.]
[2] B. R. Ambedkar, *Pakistan or the Partition of India* (Thacker & Co., Bombay, 1945), pp. 462-3.
[3] See pp. 261-5 above. [Ed.]

elect a panel of four candidates belonging to the Depressed Classes for each of such Reserved seats, by the method of the single vote ; the four persons getting the highest number of votes in such primary election, shall be candidates for election by the general electorate.

(3) Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorates and Reserved seats by the method of primary election in the manner provided for in Clause 2 above, for their representation in the Provincial Legislatures.

(4) In the Central Legislature, eighteen per cent of the seats allotted to the general electorate for British India in the said Legislature shall be reserved for the Depressed Classes.

(5) The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures, as hereinbefore mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement under the provision of Clause 6 below.

(6) The system of representation of the Depressed Classes by Reserved seats in the Provincial and Central Legislatures as provided for in Clauses 1 and 4 shall continue until determined by mutual agreement between the communities concerned in the settlement.

(7) Franchise for the Central and Provincial Legislatures for the Depressed Classes shall be as indicated in the Lothian Committee Report.

(8) There shall be no disabilities attaching to anyone on the ground of his being a member of the Depressed Classes in regard to any elections to Local Bodies or appointment to the Public Services. Every endeavour shall be made to secure fair representation of the Depressed Classes in these respects, subject to such educational qualifications as may be laid down for appointment to the Public Services.

(9) In every Province, out of the educational grant an adequate sum shall be earmarked for providing educational facilities to the members of the Depressed Classes.

(13) *Supplement to the Communal Award : Extract from Speech by Sir Samuel Hoare, Secretary of State for India, at the third Session of the Indian Round Table Conference, 24 December 1932*[1]

Then there was the question of the representation of the communities in the Centre, particularly of the Moslem community. There I think I can say definitely—I think I have said it indirectly very often before—that the Government consider that the Moslem community should have a representation of $33\frac{1}{3}$ per cent of British India seats in Federal Chambers. So far as Indian India is concerned, that must be a matter for arrangement between the communities affected and the India of the Princes. But so far as the British Government has any part in the question, we will at any time give our good offices to making it as easy as possible for an agreement between those parties in regard to future allocation of seats. There again I venture to say that definitely today, because I am anxious that the factor in the problem should not in any way impede the future progress in elaborating the further stages of the Constitution.

[1] *The Indian Round Table Conference* (*Third Session*, November-December 1932), p. 136.

(14) *Resolutions of the All-India Muslim League, on the Communal Award and Minorities' protection, 25-6 November 1933*[1]

Resolution No. 3

Whereas owing to the failure of the two majority communities inhabiting India, viz. the Hindus and the Muslims, to come to an agreement, His Majesty's Government was forced to give a decision relating to some matters between the parties and though the decision falls far short of the Muslim demands the Muslims have accepted it in the best interests of the country reserving to themselves the right to press for the acceptance of all their demands, this meeting of the All-India Muslim League condemns the activities of those who are trying to alter the decision in such a manner as to deprive the Muslims of those rights which have already been conceded to them and considers that the best course for all the communities is to work together for the salvation of the country in the spirit of give and take with a view to securing mutual confidence and goodwill and strongly urges upon the Joint Parliamentary Committee to uphold the communal decision of His Majesty's Government.

Resolution No. 4

This meeting of the All-India Muslim League considers it absolutely essential for the proper representation of important and principal religious Minorities in the Government of the Provinces and the Centre that the Governor or the Governor-General should be enjoined to use his discretion in selecting his Ministers in such a way that the following results may be obtained, viz. :

(*a*) Important and principal religious Minorities may have their adequate representation.

(*b*) The Minister or Ministers selected must have the largest following in the particular Legislature of members of his own community.

In this connexion this meeting notes with satisfaction that the evidence given by the Secretary of State for India before the Joint Parliamentary Committee on 11 July 1933 in regard to these points is very helpful.

(15) *Resolution of the Working Committee of the Indian National Congress on the White Paper and the Communal Award, 12-13 June 1934*[2]

The Congress Parliamentary Board having asked the Working Committee to enunciate the Congress policy on the White Paper proposals and the Communal Award, the Working Committee declares the Congress Policy on these matters as follows :

The White Paper in no way expresses the will of the people of India, has been more or less condemned by almost all the Indian political parties and falls far short of the Congress goal if it does not retard the progress towards it. The only satisfactory alternative to the White Paper is a Constitution drawn up by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible, with the power, if

[1] *All-India Muslim League, Resolutions, 1924-36*, pp. 57-8

[2] *The Indian National Congress, Resolutions 1934-6*, (All-India Congress Committee, Allahabad), p. 19-20.

necessary, to the important Minorities to have their representatives elected exclusively by the electors belonging to such Minorities.

The White Paper lapsing, the Communal Award must lapse automatically. Among other things it will be the duty of the Constituent Assembly to determine the method of representation of important Minorities and make provision for otherwise safeguarding their interests.

Since, however, the different communities in the country are sharply divided on the question of the Communal Award, it is necessary to define the Congress attitude on it. The Congress claims to represent equally all the communities composing the Indian nation and therefore, in view of the division of opinion, can neither accept nor reject the Communal Award as long as the division of opinion lasts.

At the same time it is necessary to redeclare the policy of the Congress on the communal question :

No solution that is not purely national can be propounded by the Congress. But the Congress is pledged to accept any solution falling short of the national, which is agreed to by all the parties concerned and, conversely, to reject any solution which is not agreed to by any of the said parties.

Judged by the national standard the Communal Award is wholly unsatisfactory, besides being open to serious objections on other grounds.

It is, however, obvious that the only way to prevent untoward consequences of the Communal Award is to explore ways and means of arriving at an agreed solution and not by any appeal on this essentially domestic question to the British Government or any other outside authority.

(16) *The Joint Committee of Parliament on Indian Constitutional Reform on the Communal Award and the Poona Pact, 31 October 1934*[1]

118. It will be recalled that owing to the failure of the various communities to reach any agreement on the subject, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats, His Majesty's Government themselves reluctantly undertook the task of devising a scheme for the composition of the new Legislatures. When their Award was published, they announced their determination not to entertain any suggestions for its alteration or modification which were not supported by all parties affected, but that if any of the communities mutually agreed upon a practicable alternative scheme, they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provisions in the Award. In the Award special arrangements were made to secure representation for the Depressed Classes. These were criticized by Mr Gandhi as introducing an artificial division between two parts of the Hindu community, and he expressed his intention of ' fasting unto death ' as a protest against them. Thereupon negotiations were initiated between representatives of the caste Hindus and of the Depressed Classes, and an agreement resulted which was embodied in the Poona Pact. This agreement in the view of His Majesty's Government was within the terms of the announcement made by them,

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars. 118-20.

and therefore properly to be included as an integral part of the Communal Award.

119. The substance of the Poona Pact is the reservation to the Depressed Classes of a number of seats out of the seats classified as general seats in the Award, which means in effect out of Hindu seats, since Hindus form the great bulk of the general electorates. These Reserved seats will, however, be filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body, and the four persons who receive the highest number of votes in this primary election will be the only candidates for election to the Reserved seat ; but the candidate finally elected to the Reserved seat will be elected by the general electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike. The number of seats reserved for the Depressed Classes under the Poona Pact is practically double the number reserved under the Communal Award ; though the latter gave the Depressed Classes electors a vote in the general constituencies as well as for the special seats reserved for themselves ; but whereas under the Communal Award the Depressed Classes electors were to vote separately for the seats reserved for them as well as jointly with other Hindus in the general constituencies, under the Poona Pact there will now only be an election by the general electorate, although the candidates for election will have been previously selected by means of a primary election at which members of the Depressed Classes only will be entitled to vote. Since the Pact does not, and indeed could not, increase the total number of seats assigned by the Communal Award to the different Legislatures, it follows that any increase in the seats reserved for the Depressed Classes must involve a diminution in the seats which will be available for caste Hindus.

120. The Communal Award was criticized by more than one witness who appeared before us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority ; and we understand that recently there has been a growing tendency in some influential sections of the Hindu community to attack the foundation of the Award. Nevertheless, it is clear to us that there is among almost all the communities in India (not excepting the Hindu) a very considerable degree of acquiescence in the Award in the absence of any solution agreed between the communities ; and in fact we entertain no doubt that, if any attempt were now made to alter or modify it, the consequences would be disastrous. The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme. We may deplore the mutual distrust of which the insistence on this demand by the Minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the

subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies. As regards the Poona Pact we are bound to say that we consider that the original proposals of His Majesty's Government constituted a more equitable settlement of the general communal question and one which was more advantageous to the Depressed Classes themselves in their present stage of development. They united the two sections of the Hindu community by making them vote together in the general constituencies, thereby compelling candidates to consider the well-being of both sections of their constituents when appealing for their support, while they secured to the Depressed Classes themselves sufficient spokesmen in the Legislature, elected wholly by depressed class votes, to ensure their case being heard and to influence voting, but not so numerous that the Depressed Classes would be unable to find representatives of adequate calibre. Under the pressure of Mr Gandhi's fast these proposals were precipitately modified ; but in view of the fact that His Majesty's Government felt satisfied that the agreement come to at Poona fell within the terms of their original announcement and accepted it as an authoritative modification of the Communal Award, we are clear that it cannot now be rejected. Nevertheless, as we have said, objections to the Pact in relation to Bengal have since been strongly urged by caste Hindus from that Province ; and if, by agreement between the communities concerned, some reduction were made in the number of seats reserved to the Depressed Classes in Bengal, possibly with a compensatory increase in the number of their seats in other Provinces where a small addition in favour of the Depressed Classes would not be likely materially to affect the balance of communities in the Legislature, we are disposed to think that the working of the new Constitution in Bengal would be facilitated.

V. The Joint Committee on Indian Constitutional Reform, 1934

(1) *The Constitution of an Indian Federation*[1]

26. . . . We have spoken of unity as perhaps the greatest gift which British rule has conferred on India ; but, in transferring so many of the powers of government to the Provinces, and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial autonomy in British India is a British-India Federal Assembly. In recent discussions, the word ' federation ' has become identified with the proposals for an all-India Federation and for the establishment, in the common phrase, of ' responsibility at the Centre ', both of which proposals we shall have to discuss in a moment. But federation is, of course, simply the method by which a number of Governments, autonomous in their own sphere, are combined

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars. 26-32 and 153-7.

in a single State. A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its Members ; indeed, as we shall show later, the Central Government of a purely British-India federation could not, in our opinion, be appropriately framed on this model. But a Federal Legislature must be constituted on different lines from the Central Legislature of a unitary State. The Statutory Commission realized this truth and proposed a new form of Legislature at the Centre, specifically designed to secure the essential unity of British India. . .

27. Of course, in thus converting a unitary State into a federation, we should be taking a step for which there is no exact historical precedent. Federations have commonly resulted from an agreement between independent or, at least, autonomous Governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. At the present moment, the British-Indian Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor-General in Council. We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act. But it is obvious that we have no alternative. To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial autonomy without any attempt to counteract them and to ensure the continued unity of India. We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. If Parliament should decide to create an all-India Federation, the actual establishment of the new Central Legislature may without danger be deferred for so long as may be necessary to complete arrangements for bringing the representatives of the States into it ; but the form of that Legislature must be defined in the Constitution Act itself.

28. This brings us to the further proposal laid before us, that the Constitution Act should also determine the conditions upon which an all-India Federation is to be established, which includes the Indian States. This is a separate operation, which may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here.

29. The Statutory Commission looked forward to the ultimate establishment of a federation of Indian States and Provinces, and they recommended that, until this ideal could be realized, policies affecting British India and the States should be discussed between the parties in a consultative, but not legislative, Council of Greater India, consisting of representatives drawn from the States and the British Indian Legislature. The Commission did not anticipate that the Princes would be willing to enter an all-India Federation without some preliminary experience of joint deliberation on matters of common concern, and no doubt

the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an all-India Federation. These difficulties are obvious and, again, they are quite distinct from the difficulties involved in the constitution of a British-India Federation. The main difficulties are two : that the Indian States are wholly different in status and character from the Provinces of British India, and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. On the first point, the Indian States, unlike the British-India Provinces, possess sovereignty in various degrees and they are, broadly speaking, under a system of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State, and after accession the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the Provinces of British India on certain terms, they could not, as sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly : a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another.

30. Against these undoubted difficulties, we have to place one great consideration of substance, which appears to us to outweigh the disadvantages of these anomalies. The unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India. It is this fact, surely, that has influenced the Rulers of the Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterized their history since the establishment of the British connexion. But they have, it appears, become keenly conscious of the imperfections of the Indian polity as it exists today. A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an all-India Federation at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an all-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal indicated in their Report which has since won so much support among the Indian Princes. The question for decision is whether the measure of unity which can be achieved by an all-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer, an affirmative one ; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to the people of this country. From their point of view

it is evident enough that Ruling Princes who in the past have been the firm friends of British rule have sometimes felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and peoples. Ruling Princes, however, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticize or even obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

31. The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British-India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India. Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States. On all these points the federation now contemplated would have power to adopt a common policy. That common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would in many respects rest with officers appointed by the State Rulers ; but, even so modified, it would mark a long step from confusion towards order. The rights of the States to impose internal customs duties cannot be abolished, but, as we shall indicate later, moderation in the use of them can be made a condition of federation. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that

Parliament, while introducing a new measure of decentralization in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole.

32. An all-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India, and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition : that, in acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an all-India Federation, but only if the Federal Government is a responsible and not an irresponsible government.

* * *

153. It is clear that, in any new Constitution in which autonomous Provinces are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authority from devolution by the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. We apprehend, therefore, that the legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations ; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought into existence.

154. The rights, authority and jurisdiction which will thus be conferred by the Crown in the new Central Government will not extend to any Indian State.[1] It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation ; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms ; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves.

155. It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instru-

[1] The relations between the Crown as Paramount Power and the States are the subject of treaties and engagements of various kinds. For details see Aitchison's *Treaties, Engagements and Sanads* (Government of India Publications Branch, Calcutta, 1929).

ment of Accession ;[1] and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he has agreed to recognize as federal subjects, to be exercised by the federal authorities brought into existence by the Constitution Act ; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly within the limits defined by the Instrument of Accession. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention, and we understand the hope of His Majesty's Government to be that Rulers who accede will in general be willing to accept items 1 to 48 of List I as Federal subjects. We have indicated our view that the Lists in Appendix VI require some modification, a matter with which we deal hereafter ; and, therefore, though we speak of items 1 to 48, we do not wish to be understood as necessarily implying that we accept all these items as appropriately falling within the federal sphere, so far as regards the Indian States, or that we think that the definition of some of them is not susceptible of improvement. Subject to this, it is convenient to consider the questions which arise in connexion with the Instrument of Accession on the basis of the White Paper proposal, with the explanations which have been given to us on behalf of His Majesty's Government.

156. It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form, though we recognize that the list of subjects accepted by the Ruler as Federal may not be identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may be called upon to pronounce upon them ; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments. Next, we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to accept, or to reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connexion with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation ; but in our judgement it is important that the deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do not need to say that the accession of all States to the Federation will be welcome ; but there can be no obligation on the Crown to accept an accession, where

[1] Cmd. 4268, Proposals 2-3.

the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable.

157. We regard the States as an essential element in an all-India Federation ; but a Federation which comprised the Provinces and only an insignificant number of the States would scarcely be deserving of the name. This is recognized in the White Paper, where it is proposed that the Federation shall be brought into existence by the issue of a Proclamation by His Majesty, but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, have signified to His Majesty their desire to accede to the Federation.[1] We accept the principle of this proposal. We observe also that it is proposed that both Houses of Parliament should first present an Address to His Majesty praying that the Proclamation may be issued. We approve this proposal, because Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis, have been fulfilled. . . We note also in passing that the establishment of autonomy in the Provinces is likely to precede the establishment of the Federation ; but in our judgement it is desirable, if not essential, that the same Act should lay down a Constitution for both, in order to make clear the full intention of Parliament.

(2) *Responsible Government at the Centre*

A[2]

23. . . . The problem of responsibility at the Centre raises grave issues of its own. We do not forget that the Statutory Commission were unable to convince themselves that this further step was justified at the time when they made their Report, and we cannot lightly put aside the reasons which led them to that conclusion. It is admitted by responsible Indian leaders that whatever form the Central Government may take, the defence and external relations of India must for the time being remain the exclusive responsibility of the Governor-General. Hence any measure of responsible government at the Centre must involve a system of Dyarchy ; but the Statutory Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs. 'It must be a government', they wrote, 'able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent presenting complicated and diverse features which it has been our business to describe' ; and they expressed the opinion that a plan based on Dyarchy was unworkable and no real advance in the direction of developing central responsibility at all. To this we might add that what we have ourselves said above on the subject of Dyarchy in the Provinces appears at first sight to be wholly inconsistent with any contrary view.

[1] Cmd. 4268, Proposal 4.

[2] Draft Report submitted by Lord Linlithgow (Chairman) to the Joint Select Committee on Indian Constitutional Reform on 18 June 1934.—*Joint Committee on Indian Constitutional Reform* (*Session 1933-4*), *Proceedings*, vol. I, pt ii.

24. We recognize the force and weight of all these arguments, but we have to deal with a state of things which did not, and indeed could not, enter into the consideration of the Statutory Commission when they reached their decision on this matter. Their examination of the problem was prosecuted at a time antecedent to the declaration by the Princes of their willingness to enter an all-India Federation, and, though they looked forward to such a Federation in the future, and indeed so framed their recommendations as to prepare the way for it, they had no choice but to deal with things as they then were and not as they might afterwards become. We, on the other hand, have to take into account as a new factor, the declaration of the Princes that they are willing now to enter into an all-India Federation, but subject always to this condition, that the Federal Government is a responsible and not an irresponsible Government. The importance of this declaration cannot be over-estimated, and if the choice is to be made between a responsible Government at the Centre with the accession of the Princes and a continuance of the present system (even with some modification) without them, we cannot doubt what the choice would be. The Indian States, both geographically and economically, are an integral part of India, and as the Statutory Commission observe, there are few subjects which should form the field of activity of a Central Government in India which do not interest also the States. Their accession to an all-India Federation will in our opinion be found to be no less to their own advantage than it will undoubtedly be to the advantage of India as a whole ; but apart from this they have a special contribution of their own to make. They will strengthen the association between India and the Crown ; and we are also persuaded that they will introduce into the new Constitution a cautious and conservative element, with a practical experience in the problems of government, which will make for sobriety and stability in Indian politics of the future.

25. Our recommendation then is conditional upon the accession of the Princes ; and if we are asked what the position would be, if the Princes should resile from their declaration, we can only reply that in that event, which happily there is no reason to contemplate, we are unaware of any pledges which bind either Parliament or His Majesty's Government, and that the matter will be at large. But the problem of Dyarchy at the Centre remains, and the objections to it so strongly urged by the Statutory Commission have still to be considered. In our opinion a system of Dyarchy at the Centre such as we propose is not open, at least in an equal degree, to the criticisms levelled against it in the Provinces. There is only an imperfect analogy between the reservation of defence or external relations and that of the present Reserved subjects in the Provincial sphere. In the Provinces the administration of the Reserved subjects touches so closely that of the subjects transferred to Ministers that an administrative decision in one field may profoundly affect decisions in another, and a division of responsibility cannot fail to have perplexing consequences. Contact between the subjects of Defence or External Relations and the range of subjects which, if our recommendations are accepted, would fall within the sphere of Ministers at the Centre is, if not remote, at least not a matter of daily occurrence. It is no doubt true that the Army at the Centre and police in the Provinces

are both concerned with the preservation of order, but their functions in this respect differ so widely that administratively they present far more points of contrast than of likeness. We do not by any means overlook the question of finance or the reactions of the Army Budget upon the finance of the Central Administration ; but here again no question arises of a constant impingement of one administrative sphere upon the other. Lastly, it is reasonable to suppose that the interest of the Princes in all matters relating to the defence of India will make them unwilling to support any action tending to blur the responsibility of the Governor-General in this field or to become parties to ill-conceived criticism of his administration of the Reserved Departments. We are led to the conclusion, therefore, that the objections of the Statutory Commission are not in themselves an insuperable bar to the grant of responsible government even at the Centre, and we are not satisfied that the sacrifice of unity will render impossible the establishment of an efficient Central Executive.

* * *

27. It has been made clear to us that, with few exceptions, Indians of every shade of political opinion have come, rightly or wrongly, to regard a measure of responsible government at the Centre as the hall-mark of nationhood, and as a thing vital to the status and self-respect of India. If these hopes and desires were now to be thwarted by the limitation to the provincial field of the principle of responsibility, we think the consequences would be disastrous alike in the Provinces and at the Centre. We apprehend that the centrifugal forces latent in all federal Constitutions would be dangerously increased, and that if an irresponsible Centre were to come into conflict with autonomous Provinces upon an issue where the popular cause was championed by the Provinces, there might emerge a state of affairs which would threaten nothing less than the integrity of the Federation. Nor could we hold it reasonable to contemplate the successful coercion, by an irresponsible Central Executive, of autonomous Provinces whose Governments enjoyed the full support of public opinion and of the Legislatures, both Central and Provincial.

B[1]

33. It is obvious at the outset that the very ground on which the Princes advocate responsibility at the Centre in an all-India Federation constitutes the strongest possible argument against responsibility at the Centre in a purely British-India Federation ; for a British-India Centre would have to deal, as now, with matters intimately affecting the States, yet would, as now, be unable to give the States any effective voice in its deliberations. If the States are irked by the exercise of such powers by the present Government of India, their exercise by Ministers responsible to a purely British-India electorate could hardly fail to lead to serious friction. Indeed, the position of the Governor-General in such circumstances, as the sole representative of the Crown in its treaty relations with the States and, therefore, as the sole mediator between a British-India electorate and the State Rulers, would be an almost impossible one. We agree, therefore, with the Statutory Commission in thinking that

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars. 33-41.

a responsible British-India Centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsibility.

34. But the Statutory Commission went further than this. They considered the question of responsibility at the Centre from another angle also. It is unnecessary to repeat all that they said on the subject, but they realized, as every student of the problem must realize, that responsible government at the Centre could not in any case extend to all departments of the Central Government, and that, in any case, it would be necessary to reserve Defence and Foreign Affairs from the sphere of ministerial responsibility. Hence any measure of responsible government at the Centre must involve a system of Dyarchy, and the Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs. 'It must be a Government', they wrote, 'able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent, presenting complicated and diverse features which it has been our business to describe'; and they expressed the opinion that a plan based on Dyarchy was unworkable and would, indeed, constitute no real advance in the direction of developing central responsibility. In this connexion we may usefully quote one passage from the Report of the Statutory Commission on the working of Dyarchy in the Provinces. 'The practical difficulty in the way of achieving the objective of Dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public. Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were to exercise control over policy; in the other, while free to criticize and vote or withhold supply, they were to have no responsibility. The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perhaps the most important feature of the working of Dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the Transferred side, and to magnify their functions in the Reserved field.'

35. These are undoubtedly formidable objections, but they do not, we think, exhaust the question. It is impossible adequately to discuss the real issues involved in a decision for or against the introduction of some measure of responsibility at the Centre if the discussion is confined to the Centre itself and is conducted in terms of 'Dyarchy'. Like so many other words used in political controversy, 'Dyarchy' has collected round it associations which tend to obscure issues rather than to clarify them. The truth is that, in any Constitution, and above all in a federal Constitution, there must be a division of responsibility at some point, and at that point there will always be a danger of friction. In framing a Constitution, the problem is to draw the line at a point where these necessary evils will be minimized, and the line will be drawn at different points according to the character and problems of the particular country

concerned. It may be drawn at a point where the powers which are reserved from the normal operation of the Constitution have, in ordinary times, little or no practical effect on the formulation and execution of policy—as, for instance, the line drawn in the British North American Act between the powers of the Governor-General and the powers of the Governor-General in Council. But in India no easy solution of this kind is possible. There the line drawn must reserve to the Governor-General large powers which will have an important effect upon the policy of the Government as a whole. Broadly speaking, three possible lines of division have been suggested to us, each of which deserves to be briefly discussed.

One is a line drawn within the sphere of the Provincial Governments in such a way as to reserve to the Provincial Governors the responsibility for the maintenance of law and order, and to the Governor-General the responsibility for all Central subjects. This solution eliminates Dyarchy at the Centre, but perpetuates it in the Provinces ; and we have already indicated our reasons for rejecting it. . .

37. The second line suggested to us is one coinciding with the line of division between the Provincial Governments and the Central Government, the former being wholly responsible Governments and the latter wholly irresponsible. This was the immediate (though not, as we shall suggest in a moment, the ultimate) line of division recommended by the Statutory Commission, and it is the one which we should probably have felt constrained to recommend if we had been considering a purely British-India Federation. But it is, we think, open to very serious objections which could not be fully present to the mind of the Statutory Commission. Though it might appear at first sight to eliminate altogether the evils of Dyarchy, its real effect is rather to conceal Dyarchy than to eliminate it. Its actual effect would be to reserve to the Governor-General much of the unpopular duty of taxation, while allotting to responsible Provincial Ministers the agreeable task of spending the money so raised. It must be remembered that the Statutory Commission based their financial recommendations on an estimate of the future revenues of India far more sanguine than would now be accepted by an expert. They, therefore, felt able to recommend the establishment of a Provincial Fund, fed by automatic allocations from Central revenues which in turn would be automatically distributed among the Provinces. In a State so happily provided with ample revenues that their division between two distinct sets of public authorities could be fixed in advance by the Constitution for all time, the existence of an irresponsible Government at the Centre side by side with responsible Governments in the Provinces might no doubt have been expected to work reasonably well. It is, however, impossible for Parliament today to base its policy on any such assumption. The Central and Provincial Governments must, as we shall show when we come to our financial recommendations, be financed from year to year largely out of the same purse. That purse, for some time to come at least, will be at best barely adequate for the needs of both. In these circumstances, Central policies of taxation and Central economic policies, on which the wealth of India and the volume of her public revenue will depend, must be of the most immediate and fundamental interest to the Government of every Province. A line of division which

withheld this whole range of policy from the consideration of responsible Ministers could hardly fail to become the frontier across which the bitterest conflicts would be waged ; and its existence would afford to Provincial Ministers a constant opportunity to disclaim responsibility for the non-fulfilment of their election promises and programmes.

38. Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other Central subjects to the care of responsible Ministers, subject to the retention by the Governor-General of special powers and responsibilities, outside his Reserved Departments, similar to (though not necessarily in all respects identical with) those which we contemplate should be conferred on the Provincial Governors. The nature of the Central safeguards which would in that event be necessary will be discussed, like the Provincial safeguards, in the body of the Report; but, subject to them, the effect of drawing the line at this point would be to make Indians responsible for legislation and administration over the whole field of social and economic policy. It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made. They contemplated an eventual all-India Federation. They believed that the Constitution which they recommended for the Central Government would contain in itself the seeds of growth and development. It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government. Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a Dyarchy of much the same kind as would result from a frank reservation to the Governor-General of the Department of Defence. In fact, the reservation of Defence, with the reservation of Foreign Affairs as intimately connected with Defence, is the line of division which corresponds most nearly with the realities of the situation. It is also the line of division which, on the whole, creates the least danger of friction. As the Statutory Commission pointed out in the passage we have already quoted, Dyarchy has not, even in the Provinces, raised any insuperable difficulties 'in the inner counsels of the government'; and the danger of friction in the inner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new Constitution.

39. The one real danger of friction, and that a serious one, lies in the very large proportion of Central revenues which is, and must continue to be, absorbed by the Army Budget. It is true that this difficulty is inherent in the facts of the situation. It exists at the present day. Ever since the Act of 1919, the Central Legislature has constantly sought to 'magnify its functions in the reserved field' of the Army Budget. The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of

Provincial Legislatures, yet denied all effective control over any branch of Central finance. It is also true that the Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance. The existence of a large standing charge for Defence circumscribes but by no means destroys the financial responsibility of Ministers. For the greater part of most national budgets are, in effect, unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform. The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small, and this margin, in India, will be within the control of Ministers, subject to the Governor-General's special responsibility in the financial sphere. Ministers will naturally wish to save money on defence in order that they may spend it on ' nation building ' departments under their own charge, but we believe that responsible Indian Ministers will be not less anxious for adequate defence than the Governor-General, and will usually after discussion with him support his view of what is necessary and will be able to convince their following in the Legislature that it is sound. Yet in spite of these weighty considerations, the danger of friction between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British-India Federation. But that is not the proposition we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention above. What we are now discussing is an all-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an all-India Federation, has introduced a new and, in our judgement, a determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the Princes who have always taken so keen an interest in all matters relating to defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake. It is, indeed, one of the main advantages of an all-India Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution.

40. Before leaving this subject we ought, perhaps, to refer to one argument which has been urged upon us in favour of a wholly irresponsible Central Government, and also to one particular danger which we think Parliament should be careful to avoid. The argument to which we refer is that an irresponsible Centre would constitute a reserve of power which could be used at any moment by the Governor-General to redress the situation in any Province, if responsible government in that Province should break down. This argument seems to us to rest on a misapprehen-

sion. The Governor-General in an irresponsible Centre would have no more and no less power of intervention in the Provinces either to forestall a constitutional break-down or to restore the situation after such a break-down, than he would possess under our recommendations. Our recommendations do, in fact, reserve to him such power through the interaction of his own and the Provincial Governors' special powers and responsibilities ; but, in so far as his opportunities of intervention are limited, they are limited, not by the constitution of the Central Government, but by the establishment of autonomous Provincial Governments. The danger which we think Parliament should avoid lies in the fact, on which we have already insisted, that ministerial responsibility is not itself a form of Government which can be created or prevented at will by the clauses of a statute, so much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government. It follows that a Constitution Act cannot legislate against ministerial responsibility at the Centre, if its other provisions, or the facts of the case, are such as to encourage the development of such responsibility. It has been suggested to us that, while the Central Government should be declared by the Constitution to be an irresponsible Government, the Governor-General should be free to select any of his Executive Council from among the members of the Central Legislature, and that a member of the Legislature assuming ministerial office should not be obliged to resign his seat in the Legislature. There is much to be said for such a proposal, but it is in fact a proposal, not for the perpetuation of an irresponsible Government, but for the gradual introduction of a responsible one. It would tend to introduce responsible government at the Centre by insensible degrees without any statutory limitation of the scope of ministerial power and responsibility. That is, indeed, broadly speaking, the way in which responsible government actually grew up in Canada. It may be difficult to draw any satisfactory line of division between reserve powers and responsible government, but, under the conditions of the problem that we are examining, Parliament should be careful not to draw a definite line in principle, only to blur it in practice.

41. We cannot leave this subject without asking the vital question which Parliament will have to answer : whether a Central Government of India constituted as we propose would fulfil the condition we have already laid down—whether it would provide a Central authority strong enough to maintain the unity of India and to protect all classes of her citizens. That question cannot be answered apart from a consideration of the strength or weakness of the Central Government as it now exists. As our inquiries have proceeded, we have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature which can be nothing but (in Bagehot's words) ' a debating society adhering to an executive '. The Members of that Legislature are unrestrained by the knowledge that they themselves may be required to provide an alternative Government ; their opinions have been uninformed by the experience of power, and they have shown themselves prone to regard support of Government policy as a betrayal of the national cause. It is no wonder that the criticism offered by the members of such a Legislature should have been mainly destructive ; yet it is abundantly clear from the

political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of Government. As a result, the prestige of the Central Government has been lowered and disharmony between Government and Legislature has tended to sap the efficiency of both. Indeed, the main problem which, in this sphere, Parliament has now to consider is how to strengthen an already weakening Central Executive. We believe that the Central Government which we recommend will be stronger than the existing Government and we see no other way in which it could be strengthened.

(3) *The Ambit of Provincial Autonomy and Distribution of Legislative Powers*[1]

The Ambit of Provincial Autonomy

50. The first problem is to define the sphere within which Provincial Autonomy is to be operative. The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of Government by reference to this distribution.[2] In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally with certain additions those which the Devolution Rules under the Act of 1919 earmarked as ' Provincial subjects ' and we are of opinion that in its broad outline the List provides a satisfactory definition of the Provincial sphere. We shall have certain suggestions and recommendations to make later, when we come to consider the List in detail, and there are a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination.

51. There is, however, another List (Appendix VI, List III), in which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws.[3] Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars 50-6 and 229-36.
[2] Cmd. 4268, Proposal 114.
[3] ibid., Proposals 111 and 112.

of the first are provided by the subject matter of the great Indian Codes,[1] of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the uncoordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province.

52. We had at first thought that the case could be met by so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of broad principles of law, the Provincial Legislatures being left to legislate for the Provinces within the general framework thus laid down. We are, however, satisfied that, with regard at any rate to some of the subjects in List III, the local conditions in a Province may require the enactment of legislation modifying a general law applicable to the Province, and that the power of enacting complementary legislation alone would not suffice. If it be said that this difficulty could be met by entrusting the Central Legislature with the power themselves to legislate for the purposes of meeting the particular needs of a single Province, our answer would be that it is wrong in principle to give the Central Legislature power to enact legislation for one Province only, on a matter which *ex hypothesi* must necessarily be one of exclusively local concern. There is no analogy between local legislation enacted by the Parliament at Westminster at the instance of a single local authority, and a power to legislate for an autonomous British-Indian Province. Nor can we disregard the obvious fact that the necessity for obtaining Central legislation might in practice cause grave difficulties to a Province, especially in cases where the demand for an amendment of the law is immediate and urgent.

53. The White Paper proposes that, where there is conflict between the Central and Provincial legislation with respect to a subject comprised in List III, the Central legislation shall prevail, unless the Provincial legislation is reserved for and receives the assent of the Governor-General.[2] This appears to us an appropriate method for effecting a reconciliation between the two points of view, and it has the further merit of avoiding the legal difficulties which any attempt further to refine the definitions in List III for the purposes of distributing the legislative power between the Central and Provincial Legislatures would of necessity create. We, therefore, approve the principle of the Concurrent List, though we reserve for subsequent consideration the question of the particular subjects which in our opinion ought to be included in it.

54. We have pointed out above that in List II are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers and that, generally speaking, this List provides a satisfactory definition of the provincial sphere. List I in Appendix VI similarly sets out the matters with respect to which the Central Legislature is to have exclusive legislative powers; and these two Lists (together with the Concurrent List) are so widely drawn that they might

[1] For example, the Indian Penal Code and the Criminal Procedure Code. [Ed.]
[2] Cmd. 4268, Proposal 114.

seem at first sight to cover the whole field of possible legislative activity, and to leave no residue of legislative power unallocated. It would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise ; and therefore, however carefully the Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures. The plan adopted in the White Paper is that the allocation of this residue should be left to the discretion of the Governor-General, and settled by him *ad hoc* on each occasion when the need for legislation arises. It would be necessary under this plan to make provision for the formal record of the Governor-General's decisions as having statutory force.

55. This scheme of allocation of powers has obvious disadvantages. It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass, the lists of subjects dealt with in all three Lists are necessarily of great length and complexity ; whereas, apart from the question of the Concurrent List, if it had been possible to allocate residuary legislative powers to, e.g. the Provinces, only a list of Central powers would have been required, with a provision to the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre ; and conversely, if the residue had been allocated to the Centre. This, broadly, is the plan which has been adopted in Canada and Australia, the residuary powers being vested, in the case of Canada, in the Dominion Legislature, and, in the case of Australia, in the Legislatures of the States. Even so, experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one Legislature or the other ; and it seems clear that the attempt made in the White Paper to allocate powers over the whole field of legislation by the expedient of specific enumeration must tend considerably to increase the danger of litigation by multiplying points of possible inconsistency.

56. On the other hand, there are two grounds on which the White Paper scheme may be defended, one of immediate political expediency and the other of constitutional substance. On the first point, we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers ; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. Where an apparently irreconcilable difference of opinion thus exists between the great Indian communities on a matter which both of them appear to regard as one of principle, the proposals of His Majesty's Government may be defended as a reasonable compromise. On the point of constitutional substance, it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion of the proposals in the White Paper would be the allocation of all residuary legislative powers to the Provincial Legislatures ; but this solution

would, we think, require to be accompanied by the insertion in List I of some general overriding power of Central legislation in matters of all-India concern, since a new subject of legislation cannot be left to fall automatically into the provincial field, irrespective of its national implications. But it is precisely an overriding clause of this kind which has led to litigation in other non-unitary States. On the whole, therefore, we are unwilling to recommend an alteration of the White Paper proposal in a field in which experience shows that no wholly satisfactory solution is possible.

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The Distribution of Legislative Powers

229. We have already explained[1] that the general plan of the White Paper, which we endorse, is to enumerate in two Lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction ; and to enumerate in a third List the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a Provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a Central subject ; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, section 84(3) of the Government of India Act provides that ' the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be '. If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed by a Provincial Legislature, and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature ; and to the extent to which either Legislature invades the province of the other, its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List, Federal or Provincial, as the case may be. The questions which may arise as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later ; but here, also, disputes as to the validity of legislation will in the last resort rest with the Courts.

230. We do not disguise the fact that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India ; nor have we forgotten that the Statutory Commission expressed the hope that the provisions of the existing Act which we have mentioned

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), par. 50. [Ed.]

above would be preserved. As we shall explain, our recommendations will have the effect of preserving, in the limited sphere of the concurrent field, the main feature of the existing system ; but we feel no doubt that the White Paper correctly insists upon a statutory allocation of exclusive jurisdiction to the Centre and the Provinces respectively as the only possible foundation for the Provincial Autonomy which we contemplate. We are fully sensible of the immense practical advantages of the present system, and of the uncertainties and litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions ; but we are satisfied that a relationship between Centre and Provinces, in which each depends in the last resort for the scope of its legislative jurisdiction on the decision of the Central Executive as represented by the Governor-General, would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces.

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232. We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces. We believe that the attempt which these Lists represent to allocate by enumeration with any approach to completeness the functions of legislation, including taxation, to rival Legislatures is without precedent. In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue. But, as we have said elsewhere, the method adopted in the White Paper has one definite constitutional advantage, apart from its virtues as a compromise between two sharply opposing schools of thought in India. We are ourselves convinced that the laborious and careful enumeration of both sets of subjects has secured that in fact no material and unforeseen accretion of power, either to Centre or Provinces, would result from the elimination of one List or the other ; and we are satisfied that the process has reduced the residue to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation. Recognizing the strength of Indian feeling on this matter we are unwilling to disturb the compromise embodied in the White Paper, the effect of which is to empower the Governor-General acting in his discretion to allocate to the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists. We are conscious of the objections to this proposal. It is inconsistent with our desire to see a statutory delimitation of legislative jurisdictions ; and the power vested in the Governor-General necessarily empowers him not merely to allocate an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands—a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand, it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces would involve not only the reservation to the Federal Legis-

lature of a generally defined overriding power, but also the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised ; and if this position were accepted it might well be necessary to deal separately and by a different method with the power to impose taxation. We recommend, however, as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists, that the Act should provide that the jurisdiction of the Federal Legislature shall, notwithstanding, anything in Lists II and III, extend to the matters enumerated in List I ; and that the jurisdiction of the Federal Legislature under List III shall, notwithstanding anything in List II, extend to the matters enumerated in List III. The effect of this will be that, in case of conflict between entries in List I and entries in List II, the former will prevail, and, in case of conflict between entries in List III and entries in List II, the former will prevail so far as the Federal Legislature is concerned.

233. We turn now to the problems presented by the Concurrent List. We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that, while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy ; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a Central and a Provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active Centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General, acting in his discretion, is made the arbiter between conflicting claims of Centre and Provinces. This in effect preserves, in the limited sphere of the concurrent field, the existing legislative relation between Centre and Provinces which excited the admiration of the Statutory Commission ; and we think that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used.

234. There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use only where an all-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province. We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had

in view in revising the List of concurrent subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the exercise by the Centre of its powers in this field, or the condition suggested in the White Paper that the Centre is to be debarred from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. We recognize that, in practice, it will be impossible for the Centre to utilize its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared, in cases where it will throw extra burdens upon provincial resources, to recommend to their own Legislatures the provision of the necessary supply ; but we consider that the practical relationships which are to develop between Centre and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions. Nevertheless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government, before initiating legislation of the kind which we are discussing, should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned. At the same time we recommend that, although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion which the White Paper proposes to vest in him in relation to matters arising in the concurrent field.

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236. Our observations have been hitherto directed solely to the legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere will not, and cannot, be the same. The effect of the proposals in the White Paper is that, while every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply *proprio vigore* in that State as they will apply in a Province, a duty identical with that imposed upon Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the States to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal Legislature in nothing which is outside the boundaries of that List ; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as bankruptcy and insolvency, in the Concurrent List.

(4) *The Allocation of the Sources of Revenue between the Federation and the Federal Units*[1]

244. In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities, but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party ; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system.

245. So far as British India is concerned the problem is not a new one. Though the separation of the resources of the Government of India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless, from the practical financial point of view there is already in existence in British India a federal system of finance. This system is fully described in the Report of the Statutory Commission. Determined to avoid the inconveniences which had already been experienced from a system of ' doles ' from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution adopted an almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre, except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India, which rests fundamentally upon the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress.

246. Both Centre and Provinces have, however, been severely affected by the world economic depression ; and the financial position of both has been severely strained. Rates of taxation have had to be increased in all directions, and every department of Government has had to submit to retrenchment ; but the way in which the strain has been borne is a tribute to the essential soundness of the present financial system. Past experience of the existing system leads to two conclusions on which there is general agreement : (*a*) that there are a few Provinces where the available sources of revenue are never likely to be sufficient

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars 244-66.

to meet any reasonable standard of expenditure ; and (*b*) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the Provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously by the more industrialized Provinces like Bombay and Bengal.

247. The provincial claim to income-tax has been given added impetus by the attitude of the States in the matter of direct taxation. The entry of the States into the Federation removes, indeed, one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike ; but the States have no say under the present system in the fixing of the tariff. With the continued rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. There is of course another side to the picture in the increased cost of the Defence Services, which is for the benefit of the States as well as for British India ; but, nevertheless, the question was becoming one of formidable difficulty, and was recognized as such in the report of the Indian States Committee of 1928-9, presided over by Sir Harcourt Butler. With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though less formidable complication. It is obviously desirable that, so far as possible, all the Federal Units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the Central revenues ; the difficulty arises over direct taxation, that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income-tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind.

248. It will be seen therefore, from two different lines of approach, that the most difficult question that arises in the problem of allocation is that of the treatment of taxes on income. In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new Federal resources were developed. The position which would be likely to result from a plan of this kind was examined in India in 1932 by the Federal Finance Committee presided over by one of our own number. The Committee declared itself unable to assume the abolition of such provincial contributions within any period that could be foreseen ; and this conclusion, and the objections felt to the reintroduction of provincial contributions, experience of which had not been too fortunate

under the existing Constitution, led to the abandonment by His Majesty's Government of this scheme.

249. There is little doubt that, from the economic point of view, it is desirable that the Provinces should, if it is practicable, share in the proceeds of taxes on income. There has been considerable discussion, since the abandonment of the plan just described, as to the amount of this share. If the problem is considered merely as one of striking a theoretically correct balance between the States and British India, on the assumption that the States will not be subject to the federal income-tax, there are many factors to be taken into account. Some of the federal expenditure will be for British-India purposes only, such as subsidies to deficit British-India Provinces ; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone ; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, e.g. holders of Indian Government securities and shareholders in British-India companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income-tax could equitably be retained by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units. Nor is it likely that any disequilibrium between British India and the States that might result from such a method of treatment would be of a serious character. The difficulty is rather that the Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas to which we refer below. But it is equally undesirable to leave the Provinces with no indication of the share which they may ultimately expect when the strain of present economic difficulties becomes less severe. It is also necessary that any transfer should be gradual, if dislocation of both Federal and Provincial Budgets is to be avoided.

250. The solution of this problem proposed in the White Paper may be briefly described as follows :[1] Taxes on income derived from federal sources, i.e., federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so. The Federal Government and Legislature would, in addition, be empowered to impose a surcharge on taxes on income, the proceeds of which would be devoted solely to federal purposes. We understand it to be implicit in this proposal that the power should only be exercisable in times of

[1] Cmd. 4268, Proposals 139, 141.

serious financial stress ; and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India. The conditions under which the States are ready to accept this proposal were explained in a statement made to us on behalf of the Indian States Delegates,[1] and we agree that conditions of the kind mentioned are not unreasonable.

251. Some obvious criticisms can be made on this plan for dealing with the taxes on income. If a specified percentage of the yield of taxes on income is to be assigned to the Provinces, any alteration in the rate of tax will affect both parties (Federation and Provinces), though there may be only one which desires either an increase or a diminution in the yield. It may be suggested that the yield of a given basic rate should be assigned either to the Federation or the Provinces, the remainder going to the other. We are, however, informed that a plan of this kind would not fit well into the Indian income-tax system, which differs considerably from the British. It is also said that the anomaly is more apparent than real, since, at least for many years to come, both Federation and Provinces will need as much money as can be obtained from taxes on income, and the fixing of the rate is likely to depend more on taxable capacity than on the precise budgetary position at any given moment of either.

252. We agree that the percentage which is ultimately to be attained should be fixed as late as possible by Order in Council ; but we see little or no prospect of the possibility of fixing a higher percentage than 50 per cent, and there is an obvious difficulty in prescribing in advance, as the White Paper does, a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process (or, as we assume, its initiation). The facts discussed below indicate that for some time to come the Centre is unlikely to be able to do much more than find the funds necessary for the deficit Provinces ; and that an early distribution of any substantial part of the taxes on income is improbable. We think that it would be preferable to leave the actual

[1] The statement made by Sir Akbar Hydari on behalf of the Indian States Delegation before the Committee was as follows :

'If (as had emerged from the figures in the Hailey Memorandum) at the time of the date of the passing of the Constitution Act, the British-India Budget, Central and Provincial, as a whole, including the Budgets of deficit Provinces, was a balanced one, the Indian States could immediately enter the Federation on the basis of the *status quo*, as then existing, so far as Finance was concerned. Secondly, that the White Paper proposals concerned may be accepted, provided that (*a*) the prescribed percentage to be retained by the Federation under paragraph 139 of the Proposals is not less than 50 per cent ; and (*b*) that it is understood that the White Paper proposals in paragraph 139 empower the Governor-General, in his discretion, to suspend beyond the ten years reductions of assignments to Provinces, if he is of opinion that the continuance of the assignment would endanger the financial stability of the Federation. Thirdly, if at any time, even during the period of the first ten years the financial position becomes such that the federal expenditure cannot be met from sources of Revenue permissible to the Federal Government, after all possible economies had been effected and the resources of indirect taxation open to the Federation exhausted, and the return of the income-tax to the Provinces suspended, a state of emergency will be held to have come into being, when all federal units will make contributions to the federal fisc on an equitable and prescribed basis. Pending questions relating to individual States should be settled as early as possible by negotiation with the States concerned.'—*Report of the Joint Committee on Indian Constitutional Reform*, vol. IIB, *Minutes of Evidence*, Question 8023. [Ed.]

periods indicated above, which the White Paper proposes should be 3 and 7 years, to be determined by Order in Council in the light of circumstances at the time rather than to fix them by Statute (the Governor-General's power to suspend being of course retained).

253. The Joint Memorandum of the British-India Delegation recognizes the difficulty of predetermining the various factors in this problem, and recommends an inquiry after three years. The Delegation do not state by what authority they consider that any decision consequent upon it should be taken, but perhaps intend that the decision should rest with the Federal Government. This does not seem fair to the Provinces.

254. A further objection has been taken by some witnesses that it is not fair to Provinces such as Bengal and Bombay that the transfer of the provincial share of taxes on income should be delayed ; and that, so long as the Federation cannot spare the money, there should be some equitable form of contribution to the Federation from all the Provinces alike. But any plan of this kind must inevitably lead in effect to a return to a system of provincial contributions which has been explored and abandoned. We do not recommend such a course.

255. It must be admitted that the White Paper proposals for dealing with taxes on income present many difficulties, but the problem does not admit of any facile solution, and, except for the suggestion made above, we do not ourselves feel able to propose an improved scheme. We should add that the actual method of distribution between the Provinces of any share in the taxes on income is a technical problem of some complexity, and we do not think that it is part of our duty to suggest a detailed scheme. The report of the Federal Finance Committee suggests a useful line of approach, on the assumption that an automatic basis of distribution can be fixed. The validity of this assumption will largely depend upon the amount of income-tax which can be allocated to the Provinces at any given time.[1]

[1] On the basis of the recommendations contained in the Report of the Financial Enquiry made by Sir Otto Niemeyer, the Government of India (Distribution of Revenues) Order, 1936, fixed the share of income-tax to be distributed among the Provinces at 50 per cent, and the distribution was to be made in the following proportions :

	Per cent
Madras	15
Bombay	20
The United Provinces	15
Bengal	20
The Punjab	8
Bihar	10
The Central Provinces and Berar	5
Assam	2
The North-West Frontier Province	1
Orissa	2
Sind	2

To enable the Centre to balance its Budget, the Federation was permitted to retain for a prescribed period of five years a portion of the moneys assigned to the Provinces. The sum that could be retained was either the whole of the provincial share or such share as would be necessary to bring the proceeds of the 50 per cent share accruing to the Centre, together with any general Budget receipts from the railways, up to 13 crores, whichever was less. During a second prescribed period of five years the Centre was to relinquish to the Provinces by equal steps so much of the provincial share as it was retaining in the last year of the first prescribed period of five years, so that within about ten years from the commencement of Provincial Autonomy, the Provinces could hope to be enjoying their full share of revenue from the income-tax. [Ed.]

256. There are two further questions connected with taxes on income on which some comment is desirable. The White Paper proposes to treat specially the taxes on the income or capital of companies.[1] We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies. It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the Federal fisc an equivalent lump sum contribution. We appreciate the desire of the States for this measure of elasticity and feel bound to accept it, though we must observe that the details of the arrangement with the States seem likely to be complex and that the adoption of the alternative procedure is economically undesirable.

257. The White Paper also proposes that a Provincial Legislature should be empowered to impose a surcharge not exceeding 12½ per cent on the taxes levied on the personal income of persons resident in the Province, and to retain the proceeds for its own purposes.[2] There is, we understand, a considerable difference of opinion in India on this suggestion. It might lead to differential rates of tax on the inhabitants of different Provinces, and although a limit would be set to the possible differences, this is in itself undesirable. The rates of taxes on income are likely also to be sufficiently high to make it difficult to increase the rate by way of surcharge, and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand, the proposal would undoubtedly give an elasticity to provincial revenues, which would be very desirable until the transfer of their share of the income-tax is completed. But after balancing the considerations on either side, we are on the whole not in favour of it.

258. The White Paper proposes that the Provinces should have exclusive power to impose taxes on agricultural incomes, which are not at present subject to income-tax. We approve this proposal.

259. We come now to the question of deficit Provinces. The problem of Sind differs from that of the others, since it is not expected that this Province will permanently remain a deficit area. Other Provinces, notably Orissa and Assam, are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources, present or proposed ; and in these cases it is intended that there shall be a fixed subvention from the Federal revenues.[3] Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended federal assistance ; and we agree. It is proposed that the Provinces to be assisted and the amounts of the subvention should be determined after further expert inquiry at as late a date as possible. The case of the North-West Frontier

[1] Cmd. 4268, Proposal 142.
[2] ibid., Intro., par. 57 ; Appendix VI, List II(66).
[3] Cmd. 4268, Proposal 144.

Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees (0.75)[1] annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though not strictly to be classified as Defence expenditure. In this case it seems essential that there should be power to review the amount from time to time, though here also too frequent changes would be open to the objection to which we have referred above.[2]

260. The White Paper proposals introduce two new features into the plan for the division of resources apart from the arrangements discussed above. Subject to the approval of the Governor-General in his discretion, power is given to the Federation to allot to the federal Units (and not merely to the Provinces) a share of the yield of salt duties and of excise duties, other than those specifically assigned to the Provinces, and also of export duties.[3] We understand that the main purpose of this provision in relation to salt duties and excises is to make the financial scheme more elastic in the interest of future developments ; and it is very probable that a power to assign a share to the Units may facilitate the introduction of a new tax. With this desire to avoid too great a rigidity in the plan of allocation we agree. The particular instance of export duties requires special mention, since it is proposed in the case of the jute export duty that it should be obligatory to assign at least one-half of the proceeds to the producing Units.[4] We understand that this proposal is made largely in the interests of Bengal, which has undoubtedly suffered severely under the existing plan of allocation ; and the circumstances are so special as, in our opinion, to justify special treatment. A claim has also been made by Assam to a share in the proceeds of the excise duty on petroleum. It is certain that Assam urgently needs an assured increase in its revenue, but the question in what form this need

[1] The figure in brackets here and elsewhere in this section denotes the equivalent figure in millions sterling at 1s. 6d. to the rupee.

[2] On the recommendation of the Niemeyer Report the Government of India (Distribution of Revenues) Order, 1936, fixed the subventions to be granted to certain Provinces as follows :

(*a*) *The United Provinces*
25 lakhs of rupees in each year of the first five years from the commencement of Provincial Autonomy.

(*b*) *Assam*
30 lakhs of rupees in each year.

(*c*) *The North-West Frontier Province*
100 lakhs of rupees in each year.

(*d*) *Orissa*
In the first year after the commencement of Provincial Autonomy, 47 lakhs of rupees ; in each of the next four succeeding years, 43 lakhs of rupees ; and in every subsequent year, 40 lakhs of rupees.

(*e*) *Sind*
In the first year after the commencement of Provincial Autonomy, 110 lakhs of rupees ; in each of the next nine years, 105 lakhs of rupees ; in each of the next twenty years, 80 lakhs of rupees ; in each of the next five years, 65 lakhs of rupees ; in each of the next five years, 60 lakhs of rupees ; and in each of the next five years, 55 lakhs of rupees. [Ed.]

[3] Cmd. 4268, Proposal 137.

[4] On the recommendation of the Niemeyer Report, the Government of India (Distribution of Revenues) Order, 1936, fixed the Provincial share at 62½ per cent. [Ed.]

is to be met, whether by fixed subvention or by assignment of revenues, is a matter of fiscal administration on which we do not feel called upon to express an opinion.

261. Another feature in the scheme is a category of taxes (of which Stamp Duties are the only ones at present imposed, though there may be a limited scope in the near future for Railway terminal taxes) in which the power to impose the tax is vested solely in the Federation, though the proceeds would be distributed to the Provinces, subject to the right of the Federation to impose a surcharge for federal purposes.[1] We can well understand that in cases where uniformity in the rate of tax, or central administration, is essential, machinery of this kind may be desirable, even though no part of the proceeds is retained for the Centre.

262. The fact that the federal Units either will, or may, share in the yield from certain federal taxes implies that the federal Budget cannot be the concern of the Federal Government and Legislature alone. This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection ; but we see no escape from it. In order to bring about mutual consultation between Federation and Units in matters of this kind the White Paper proposes that federal legislation upon them should require the prior assent of the Governor-General, to be given only after consultation with both the federal Ministry and the Governments of the Units.[2] We are doubtful whether a statutory obligation to consult the Units may not give rise to difficulties, and we see some advantage in directing the Governor-General in his Instrument of Instructions to ascertain the views of the Units by the method which appears to him best suited to the circumstances of the particular case. On the other hand, a suggestion has been made for an entirely different solution of the problem, and that all central receipts which are to go in aid of provincial revenues should be paid into a special Provincial Fund to be administered for the benefit of the Provinces by the Governor-General, on the advice of a statutory Inter-Provincial Council representing the Provincial Governments. We have already given our reasons for thinking that it is undesirable to include in the Constitution Act statutory provisions in regard to an inter-Provincial Council. Clearly, if it should prove impossible, at any rate in the early years of the Federation, to devise, an automatic basis for the distribution of income-tax to the Provinces, some form of consultation between the Governor-General and the Provincial Governments as to the methods of distribution will have to be devised ; but in that event the point can, if necessary, be met by the Order in Council procedure which we have already suggested.

263. The entry of the States into Federation, apart from the major questions referred to above, involves some complicated financial adjustments, mainly in respect of tributes and ceded territories ; but these, though of importance to individual States, do not fundamentally affect the federal finance scheme as a whole. They have been exhaustively examined in the Report of the Indian States Enquiry Committee, 1932,[3] which was also presided over by one of our members. We do not think it necessary to review the intricate adjustments there discussed,

[1] Cmd. 4268, Proposal 138.
[2] Cmd. 4268, Proposal 140.
[3] Cmd. 4103.

and it is sufficient to say that we endorse the main principles on which the Report is based, and in particular the gradual abolition over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

264. It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose them is specifically limited by treaty. We recognize that it is impossible to deprive States of revenue upon which they depend for balancing their Budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation ; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion[1] would have to be brought to bear upon the States.

265. Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the Report ; and we understand that at the moment questions of importance are at issue between the Government of India and some of these States on this subject. We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State ; but we recognize that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question

[1] Cmd. 4268, Proposal 129.

will have to be seriously considered whether the State could properly be admitted to the Federal system. It is unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India.

266. Before leaving this part of the subject of federal finance, reference should be made to the arrangements proposed for the regulation and co-ordination of federal and provincial borrowing. The proposals in the White Paper on the subject[1] seem to us acceptable, subject to one additional provision. A Provincial Government will be empowered to borrow directly from the Federal Government, or itself to raise a loan, though the latter will require the sanction of the Federal Government if the Province is already in debt to the Centre. We think that this is right ; but it puts great power in the hands of the Federal Ministry, who might, by refusing the application of a Province or by insisting upon unreasonable conditions, assume the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances, it seems to us that the ultimate decision whether consent has been unreasonably withheld in any instance should rest with the Governor-General in his discretion.

(5) *Safeguards*[2]

21. That word, like other words repeatedly used in recent discussions, has become a focus of misunderstandings both in England and India. To many Englishmen it conveys the idea of an ineffective rearguard action, masking a position already evacuated ; to many Indians it seems to imply a selfish reservation of powers inconsistent with any real measure of responsible government. Since it is too late to invent a new terminology, we must make it clear that we use the word in a more precise and quite different sense. On the one hand, the safeguards we contemplate have nothing in common with those mere paper declarations which have been sometimes inserted in constitutional documents, and are dependent for their validity on the good will or the timidity of those to whom the real substance of power has been transferred. They represent on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial, and as fully endorsed by the law, as that vested by the Constitution of the United States in the President as Commander-in-Chief of the Army—but more extensive both in respect of their scope and in respect of the circumstances in which they can be brought into play. On the other hand, they are not

[1] The White Paper proposals were as follows :

148. The Federal Government will be empowered to grant loans to or to guarantee a loan by any Governor's Province or State-member of the Federation on such terms and under such conditions as it may prescribe.

149. The Government of a Governor's Province will have power to borrow for any provincial purpose on the security of provincial revenues, within such limits as may from time to time be fixed by provincial law, but the consent of the Federal Government will be required if either (*a*) there is still outstanding any part of a loan made or guaranteed by the Federal Government or by the Governor-General in Council before the commencement of the Constitution Act ; or (*b*) the loan is to be raised outside India. [Ed.]

[2] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars. 21-5.

only not inconsistent with some form of responsible government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which it could have little or no hope of success. It is in exact proportion as Indians show themselves to be, not only capable of taking and exercising responsibility, but able to supply the missing factors in Indian political life of which we have spoken, that both the need for safeguards and their use will disappear. We propose to examine later in this Report the nature of the safeguards required, but we think it right to formulate here what seem to us to be the essential elements in the new constitutional settlement which these safeguards should be designed to supply.

22. The first is flexibility, so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself. The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919 ; but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding, of political instinct and of tradition, which Lord Bryce . . . postulates as essential to the working of our own Constitution. The success of a Constitution depends, indeed, far more upon the manner and spirit in which it is worked than upon its formal provisions. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the exact lines which constitutional development will eventually follow, and it is, therefore, the more desirable that those upon whom responsibility will rest should have all reasonable scope for working out their own salvation by the method of trial and error. In other words, as the Statutory Commission emphasized in their Report, the new Indian Constitution must contain within itself the seeds of growth.

23. Next, there is the necessity for securing strong Executives in the Provinces. We have little to add to what the Statutory Commission have written on this point, and in our judgement they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater. We do not doubt that Indian Ministers, like others before them, will realize this truth, but, in view of the parliamentary weaknesses which we have pointed out, the risk of divided counsels and therefore of feebleness in action is not one which can be ignored. We have no wish to underrate the legislative function ; but in India the executive function is, in our judgement, of overriding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same complexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail in the body of our Report. Here, we content ourselves with saying that there must be (to quote again the Statutory Commission) an executive power in each Province which can step in and save the situation before it is too late. This power must be vested in the Governor,

and so strongly have we been impressed by the need for this power, and by the importance of ensuring that the Governor shall be able to exercise it promptly and effectively, that, among other alterations in the White Paper, we have felt obliged to make a number of additional recommendations in regard to the Governor's sources of information, the protection of the police, and the enforcement of law and order.

24. But, further, a strong Executive is impossible and the power thus vested in the Governor would be useless, in the absence of a pure and efficient administration, the backbone of all good government. The establishment of a strong and impartial Public Service is not the least of the benefits which British rule has given to India, and it is perhaps the most prized. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration ; and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient administrative system. But no service can be efficient if it has cause for anxiety or discontent. It is therefore essential that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new Constitution, and that new entrants should not be discouraged by any apprehension of inequitable treatment. We have every hope that such anxieties or apprehensions will prove unfounded, but they may be none the less real on that account ; and, so long as they exist, it is necessary that all reasonable measures should be taken to remove them.

25. Lastly, there must be an authority in India, armed with adequate powers, able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves. Such an authority will be as necessary in the future as experience has proved it to be in the past. Under the new system of Provincial Autonomy, it will be an authority held, as it were, in reserve ; but those upon whom it is conferred must at all times be able to intervene promptly and effectively, if the responsible Ministers and the Legislatures should fail in their duty. This power of intervention must, generally speaking, be vested primarily in the Provincial Governors, but their authority must be closely linked with, and must be focused in, a similar authority vested in the Governor-General, as responsible to the Crown and Parliament for the peace and tranquillity of India as a whole, and for the protection of all the weak and helpless among her people.

(6) *Commercial and other Forms of Discrimination*[1]

342. The importance attached in this country to this part of the Indian constitutional problem has been much misunderstood in India. We believe that our first duty is to define it in such a way as to remove this misunderstanding. In our view the problem is divisible into two entirely separate issues. The only one of these issues dealt with in the White Paper is the question of administrative and legislative discrimination against British commercial interests and British trade in India. With this issue we deal in detail in later paragraphs.

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars 342-58 and 360.

343. The other issue, which we now proceed to consider, is that of discrimination against British imports. As is well known, the fiscal relations between the United Kingdom and India have now been regulated for some thirteen years by the recommendations of the Joint Committee on the Bill of 1919—commonly known as the Fiscal Convention.[1] It is a commonplace that the exact scope and effects of this Convention have afforded much ground for discussion, and that the Convention has not—as indeed could hardly have been expected—succeeded in placing beyond controversy the rights and duties of the two parties to it. But, with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report, the Convention, in its present form at all events, will necessarily lapse ; and, unless the Constitution Act otherwise provides, the Federal Legislature will enjoy complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters with this country. The difficulties which would be likely to arise from this uncertainty would, moreover, find a fruitful source of increase in that atmosphere of misunderstanding to which we have alluded. It is suggested in India that, in seeking to clarify the fiscal relations between India and themselves, His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British, at the expense of Indian, trade. The suggestion is without foundation, but can be countered only by clear proposals which will show how false it is. On the other hand, statements of a very disturbing character have been made from time to time by influential persons in India which have aroused suspicions and doubts in the United Kingdom. In these circumstances, appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to the new conditions, and of reassuring sensitive opinion in both countries. Certainly, such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side.

344. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention. Fears have, indeed, been expressed lest the exercise by the Indian Legislature of the powers contemplated in the Convention might result in the imposition of penal tariffs on British goods or in the application to them of penally restrictive regulations with the object not, of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy ; and we have been assured by the Indian Delegates that there will be no desire in India to utilize any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based. But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two countries. The machinery of the Governor-General's special responsibilities, supplemented by his Instrument of Instructions, offers India and the United

[1] See Part I, pp. 28-9 above.

Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application.

345. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows : 'The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment.' But, as it is important that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy ; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions ; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. It should further be made clear that the ' discriminatory or penal treatment ' covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products ; and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

346. But although the Instrument of Instructions affords the means of defining more fully than would be possible in the Act itself the scope and purpose of the special responsibility which the Act should confer, even this document cannot conveniently be utilized as the means of explaining the broad principles upon which in our view the future trade relations between India and the United Kingdom should be based. We wish therefore to express our own conception of these principles. We think that the United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. Both countries have a wide range of needs and interests ; in some of these each country is complementary to the other, while in some each has inevitably to look rather to a third country for satisfactory arrangements of mutual advantage. The reciprocity which, as partners, they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either

partner from entering into special agreements with third countries for the exchange of particular commodities, where such agreements offer it advantages which it cannot obtain from the other ; but the conception does imply that, when either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

347. We turn now to the other issue presented by this chapter of our Report, namely, the prevention of discrimination against British trade in India. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects. Witnesses who appeared before us spoke in the same sense and the British-India Delegation, in their Joint Memorandum, state that on the question of principle there has always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade. Their policy is, in fact, one of a fair field and no favour. The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act ; and to this our answer must be that, here again, utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity.

348. Discrimination may be of two kinds, administrative or legislative. We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. We agree, however, with the proposal in the White Paper[1] that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, if our subsequent recommendations on the subject of legislative discrimination are accepted, we think it should be made clear in the Constitution Act that this special responsibility extends to the prevention of administrative discrimination in any of the matters in respect of which provision against legislative discrimination is made under the Act.

349. We have said that it is in our view impossible to attempt any precise definition, with a view to its prohibition, of administrative discrimination. Legislative discrimination, however, stands upon a different footing, and it is in our judgement possible to enact provisions against it.

[1] Cmd. 4268, Proposals 18 and 70.

We do not forget that to the Statutory Commission the technical objections to any attempt to define discriminatory legislation in a constitutional instrument seemed decisive ; but we observe that the Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw ' no reason to doubt that an experienced parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a court of law to interpret and make effective '. The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with them in thinking that the attempt should be made. We do not think that the White Paper proposals on the subject are very clear or precise, and in the paragraphs which follow we shall indicate the statutory provisions which, as it seems to us, ought to find a place in the Constitution Act.

350. We think it right to make by way of preface some general observations. Firstly, we express our entire agreement with the statement of the British-India Delegation in their Joint Memorandum ' that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter ', and we shall have certain suggestions to make later on this aspect of it. Secondly, we are of opinion that these arrangements can only be extended to include the relations between India and other parts of His Majesty's Dominions by mutual agreement. Lastly, we think that, so far as possible, any statutory enactment should be based upon the principle of reciprocity.

351. Subject to what we say hereafter on the question of reciprocity, we are of opinion (1) that no law[1] restricting the right of entry into British India should apply to British subjects domiciled in the United Kingdom ; but there should be a saving for the right of the authorities in India to exercise any statutory powers which they may possess to exclude or remove undesirable persons, whether domiciled in the United Kingdom or elsewhere ; and (2) that no law relating to taxation, travel and residence, the holding of property, the holding of public office, or the carrying on of any trade, business, or profession in British India, should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions based upon domicile, residence or duration of residence, language, race, religion, or place of birth.

352. As regards companies, we are of opinion (1) that a company incorporated now or hereafter in the United Kingdom, should, when trading in India, be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies ; and (2) that British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated now or hereafter in India should be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of directors, shareholders, agents or servants.

[1] ' Law ' throughout these paragraphs is intended to include any regulations, by-laws, etc., by whomsoever made, having the force of law.

353. There should, however, be reciprocity between India and the United Kingdom; and accordingly if a United Kingdom law imposes in the United Kingdom upon Indian subjects of His Majesty domiciled in India or upon companies incorporated in India conditions, restrictions or requirements in respect of any of the above matters from which in India British subjects domiciled in the United Kingdom and companies incorporated in the United Kingdom would otherwise be exempt, the exemption enjoyed by the latter would *pro tanto* cease to have effect.

354. We think that separate provision should be made for the case of ships and shipping; and it should be enacted that ships registered in the United Kingdom are not to be subjected by law in British India to any discrimination whatsoever, as regards the ship, officers or crew, or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom.

355. We are satisfied that there would have to be certain exceptions. Thus, the statutory provisions which we have suggested ought not to affect any laws in force at the commencement of the Constitution Act, or laws which exempt from taxation persons not domiciled or resident in India.

356. A further exception seems necessary in connexion with the Indian Acts, Federal or Provincial, which authorize the payment to companies or firms of grants, subsidies or bounties out of public funds for the purpose of encouraging trade or industry in India. A Committee, known as the External Capital Committee, in 1925 recommended that certain conditions should be attached to grants of this kind and their recommendations were adopted, and have since that date been acted upon, by the Government of India. These seem to us to have been conceived in a very reasonable spirit, and we do not think that any objection could be taken to them. But we think that a distinction may properly be drawn between companies already engaged, at the date of the Act which authorizes the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently; and we therefore recommend that in the case of the latter it may be made a condition of eligibility for the grant that the company should be incorporated by or under Indian law, that a proportion of the directors (which should, we think, not exceed one half of the total number) shall be Indians, and that the company shall give such reasonable facilities for the training of Indians as the Act may prescribe. In the case of the former, the reciprocal provisions which we have suggested would continue to apply, and the company should be equally eligible to participate in the grant with Indian companies.

357. But it will still be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connexion with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors, in exercising their discretion in the matter of assent to Bills, not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination, but to withhold their assent from any measure which, though not in form discriminatory, would in their judgement have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the

nature of the discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have in view. We are conscious, however, of the difficulty of framing completely water-tight prohibitions and of the scope which ingenuity might find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered ; and, in this difficult matter of discrimination in particular, we should not regard this condition as fulfilled if the Governor-General and Governors regard the exercise of their discretion as restricted by the terms of the statutory probibitions. We further recommend that the Instrument of Instructions of the Governor-General and the Governor should require him, if in any case he feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, to reserve the Bill for the signification of His Majesty's pleasure. We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would lay open to challenge in the Courts as being *ultra vires* any legislative enactment which is inconsistent with these prohibitions, even if the Governor-General or the Governor has assented to it.

358. Our attention has been called to the question of the qualifications required for the practice of the different professions in India, and the suggestion has been made that persons holding United Kingdom qualifications ought to be secured a statutory right to practise in India by virtue of those qualifications. The case of medical practitioners has features of its own and we deal with it separately in the paragraphs which follow : but with regard to professional qualifications in general we are unable to accept the suggestion. Except in certain cases in which a qualification has been specially recognized by or under some Indian law as giving a title to practise, persons holding United Kingdom qualifications at present follow their professions in India without restraint, but have always been subject to such restrictions as the present Indian Legislatures might have imposed. We think that the Indian Legislatures of the future should equally be free to prescribe the conditions under which the practice of professions generally is to be carried on. But it seems to us that the vested interests of those who are practising a profession in India at the commencement of the new Constitution Act may properly be safeguarded ; and we think that they should have a right to continue to practise notwithstanding any future Act which may be passed by any Indian Legislature requiring Indian qualifications as a condition of practice. We may, however, be permitted to express the hope that, when the different professions in India become, as we hope they will, organized and controlled by their own governing bodies, arrangements will be freely made with the corresponding bodies in the United Kingdom for the mutual recognition in both countries of the qualifications prescribed by each, or at least that mutual facilities will be given for their acquisition.

* * *

360. We have expressed our concurrence with the statement in the British-India Joint Memorandum that 'a friendly settlement by negotiation is by far the most appropriate and satisfactory method' of dealing with the question of discrimination. At the first Round Table Conference the Report of the Minorities Sub-Committee was adopted which contained a paragraph to the effect that there should be no discrimination between the rights of the British mercantile community trading in India and the rights of Indian born subjects, and that 'an appropriate Convention based on reciprocity should be entered into for the purpose of regulating these rights'. It was suggested by some that a Convention for this purpose should be negotiated forthwith, and it was argued that in that event statutory provision in the new Constitution would be rendered unnecessary. We have no doubt, however, that such a Convention, designed to regulate rights under a new constitutional order, could not with propriety be made except with the new Indian Government, and that the proposal made in January 1931 was for that reason impracticable. Nevertheless, since we hold strongly that the conventional is preferable to the statutory method, and that agreement and goodwill form the most satisfactory basis for commercial relations between India and this country, we think that there should be nothing in the Constitution which might close the door against a Convention. We recommend accordingly that His Majesty, if satisfied that a Convention has been made between His Majesty's Government in the United Kingdom and the new Government of India covering the matters with which we have already dealt in this chapter of our Report, and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature, should be empowered to declare by Order in Council that the statutory provisions in the Constitution Act shall not apply so long as the Convention continues in force between the two countries. It may be said that the practical result will be exactly the same, and this no doubt is true; but the merit of the proposal, as we see it, is that it would enable the Indian Government and Legislature, if they so desire, to substitute a voluntary agreement for a statutory enactment, and would therefore give to the arrangements for the reciprocal protection of British subjects in India and the United Kingdom respectively the conventional basis which in our judgement it is most desirable that they should have.

VI. The Separation of Burma from India

(1) *The All-India Congress Committee, 27-8 March 1931*[1]

This Congress recognizes the right of the people of Burma to claim separation from India and to establish an independent Burman State or to remain an autonomous partner in a free India with a right of separation at any time they may desire to exercise it. The Congress, however, condemns the endeavour of the British Government to force separation of Burma without giving adequate opportunity to the Burmese people to express their views and against the declared wishes of their national

[1] *The Indian National Congress Resolutions, 1930-4* (All-India Congress Committee, Allahabad), p. 65.

political organizations. This endeavour seems to be deliberately engineered to perpetuate British domination there so as to make Burma together with Singapore, by reason of the presence of oil and their strategic position, strongholds of imperialism in Eastern Asia. The Congress is strongly opposed to any policy which would result in Burma being kept as a British dependency and her resources exploited for British imperialist purposes and would also be a menace to a free India as well as to the other nations of the East. The Congress urges that the extraordinary powers given to the Government of Burma be withdrawn and the declaration by the Government that representative and important organizations of Burmese national opinion are illegal be also withdrawn so that normal conditions be restored and the future of Burma may be discussed by her people without hindrance in a peaceful atmosphere and the will of the Burmese people may prevail.

(2) *Resolution passed by the Burma Legislative Council, 22 December 1932*[1]

(1) That this Council opposes the separation of Burma from India on the basis of the Constitution for a separated Burma outlined in the statement of the Prime Minister made at the Burma Round Table Conference on the 12th January 1932.[2]

(2) That this Council emphatically opposes the unconditional and permanent federation of Burma with India.

(3) This Council will continue to oppose the separation of Burma from India until Burma is granted a Constitution on the following basis:

(*a*) The future Constitution of Burma shall provide for the immediate transfer to popular control of at least the same measure of responsibility and the same subjects and powers as will be transferred to popular control in the Indian Federation, both at the Centre and in the Provinces.

(*b*) The subjects and powers reserved to the Governor shall be only for a period of transition and such Reserved powers shall be framed and exercised in accordance with recognized constitutional practice and shall in no way prejudice the advance of Burma through the new Constitution to full responsibility for her own Government within a reasonable period and the

[1] *Proceedings of the Burma Legislative Council* (1932), vol. XXIII, pp. 364-5.

[2] The chief points of the declaration were as follows :

'The first step is to ascertain whether the people of Burma endorse the provisional decision that separation should take place. . .

The people of Burma will be in a position to decide whether or not they are in favour of separation from India. His Majesty's Government consider that the decision might best be taken after a general election at which the broad issue had been placed before the electorate.

That decision will determine whether, on the one hand, Burma should be independent of India with a Constitution on the lines set forth above or, on the other hand, should remain a Province of India with the prospects indicated in the proceedings of the two Sessions of the Indian Round Table Conference—and in this connexion it should be remembered that if an Indian Federation is established it cannot be on the basis that members can leave it as and when they choose.'

The elections were held in November 1932 and the results were as follows : Anti-Separationists, 42 ; Separationists, 29 ; Neutrals, 9. [Ed.]

new Constitution for Burma shall further prescribe the manner in which or the time when the said Reserved subjects and powers are to be transferred to popular control on the basis of full responsibility.

In the event of failure to obtain a definite pronouncement from His Majesty's Government that Burma, if and when separated from India, will be granted the aforesaid Constitution, this Council proposes that Burma shall enter the Indian Federation with at least the following terms :

(*a*) Burma shall have the right to secede from the Indian Federation which it may exercise through its Legislature.

(*b*) There shall be such financial adjustments between Burma and India as may be required by Burma's peculiar local conditions and other circumstances.

(*c*) The division of central and provincial subjects in the proposed Indian Federation shall be reconsidered with reference to Burma with a view to provincialization of additional subjects, special regard being had to Burma's geographical position and its peculiar needs and conditions, and further Burma shall be afforded all necessary facilities for acquiring administrative experience and knowledge of the Reserved and Federal subjects.

That in view of the statement made by the Hon'ble Leader of the House on the 16th December 1932, in paragraph 3 of the passage explaining the position of His Majesty's Government that His Majesty's Government have always contemplated that an opportunity should be given to representatives of Burma to express further views on the provisions of the Constitution outlined before they are finally enacted, this Council expresses its deep satisfaction and gratitude and urges that a conference will be called at an early date for the purpose of determining the future constitution of Burma either as a separate unit on the aforesaid basis or as a unit in the Indian Federation with the aforesaid terms.[1]

[1] On 25 April 1933, a motion regarding separation of Burma from India moved by Mr Ramri U Maung Maung was discussed in the Burma Legislative Council, but the Council was prorogued without the motion being put to vote. The Anti-Separationists accused the Separationist Party and the Government of having prevented the expression of the Council's decided view against separation by deliberately proroguing the Council before the motion could be voted upon. The text of the motion was as follows :

'That this Council, realizing that the only alternative to separation from India is permanent inclusion on the same conditions as all other Provinces either in the proposed Federation of India or (if such Federation is not accomplished) in British India, reaffirms the resolution passed at the last Session of the Burma Legislative Council opposing the separation of Burma from India on the basis of the constitution outlined by the Prime Minister at the Burma Round Table Conference, and further opposes the entry of Burma into the Federation on the basis of the Constitution outlined in the White Paper.

(*b*) In pursuance of the policy of opposition to the separation of Burma from India until a Constitution affording a basis for the attainment of full responsible self-government is obtained, this Council requests the Government to convene a Conference including fully representative political elements of this country with representatives of Parliament with a view to formulate a Constitution affording a basis for the automatic growth of Burma towards full responsible government as a separate political entity within a reasonable period.'—*Proceedings of the Burma Legislative Council* (1933), vol. xxv, p. 15. [Ed.]

(3) *Extracts from a Discussion between the Joint Committee of Parliament and the Delegates from Burma, 6-7 December 1933*

(A) *Speech by Mr U Kyaw Din*[1]

To enable you to understand us I should like to place before you two fundamental considerations. On those two fundamental considerations the whole of our aims and our entire desires are based. The first is that the Burmese are a nation and a people. This may sound obvious, but from the literature that was supplied and piled upon us, and from the cursory glance I had over that literature, I came to the conclusion that at least the Indian Delegates did not quite realize that. When I say we are a people and a nation, I distinguish our people from that of India in this respect : India is a very big continent. The Bengalis, for instance, cannot claim themselves to be a nation or a people. Every little community, every member of a sect or religion, will remain in a watertight compartment as it were. Therefore, their only way of political emancipation is by way of a Federation of these different watertight compartments, whereas Burma is different. Every Burman remembers, and cherishes that memory, that he is a member of a whole. The second fundamental idea is that every Burman remembers that not very long ago, only 47 years ago, he had a King of his own ; his nation was a nation that had an honourable seat amongst the family of nations. His songs, his lyrics, his folk-lore press him on to that, remind him of that fact, and the great idea of his life is to strive on so that he may gain to that status, so that he may form a separate unit, so that he may form one political entity. It never enters into his mind, not even in his dreams, that he would form a unit, a minor unit of a great Federation of different peoples. Those are the fundamental ideals, hopes and aspirations of Burma. If that is so, one would naturally ask, why do you not want to be a separate unit yourself when you have got the chance now ? My answer to that, my Lord Chairman, is this : Because our ideas are so fixed, our desire to form a separate unit so ardent, our hopes of attaining that unity are so great that we are prepared to sacrifice that for the present moment, if we find that the ways and means offered to us of attaining our ideals do not come up to the standard which we have set up. That, I venture to submit, my Lord Chairman, is the beginning of the Anti-Separationist League and ideals. 'If that is so', it may be asked, ' why did you then 18 months ago start this movement ? ' As I submitted to you, we had our doubts, we had our fears and those doubts and fears were shared not only by us but the Government of Burma itself. May I invite your attention to the dispatch of the Government of Burma dated the 13th August 1930 ? The Government of Burma expressed those doubts and fears in this language : ' The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for

[1] *The Joint Committee on Indian Constitutional Reform*, vol. II, *Records*, A 1 and 2, B 1, 2 and 3, and C 1, 2 and 3, pp. 115-18. Mr U Kyaw Din was one of the founders of the Anti-Separationist League, and was an ex-Minister of the Government of Burma. For reasons given in the above extract, he later advocated separation of Burma from India. [Ed.]

the allegation is frequently made in that section of the Public Press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony.' Those were the doubts and fears of the Government of Burma. Those were the doubts and fears which I shared fully and which prompted me to start this Anti-Separationist League. . . Those doubts were further strengthened when I recall to my mind the little incident the Burma Delegates had at the Burma Round Table Conference. One of the Burma Delegates (he happened to be an Englishman) expressed the hope that any political advancement made to India would apply to Burma ; he was promptly ticked off and he was told that what was held out to India was meant for India and need not necessarily apply to Burma. That increased our fears. That expressed the opinion as put forward by the Government of Burma. It was at no time contemplated, as I submitted, that we would form part, a small unit, of a great Federation. At the very beginning when we started this movement nearly 18 months or 20 months ago, some of the papers described us as ' Federationists '. We immediately repudiated it—that we were not Federationists but that we were Anti-Separationists on the basis of the Constitution as outlined by the Right Honourable The Prime Minister. At that time I would ask you to bear in mind that we had before us only the statement of the Right Honourable The Prime Minister : the Indian question had not been discussed. Although it had been to a certain extent discussed, yet it had not been announced what India was going to be provided with. . . Since then, time has changed ; things have been made clearer to us. . . I should like to put the present position in these words. I cannot do better than by referring to a statement of the Right Honourable the Secretary of State for India made in the House of Commons on the 20th March 1933, with this one little addition : ' To put it summarily : the same range of opportunity and function that it is proposed to devolve in India either upon the Federal Legislature or the Provincial Legislatures is in the case of Burma to be devolved upon the Burma Legislature ; the same subjects that in India are proposed to be reserved to the Governor-General would in Burma be reserved to the Governor, and the same Special Responsibilities that in India are to be imposed on the Governor-General or the Provincial Governors, as the case may be, will in Burma be imposed upon the Governor. That is a statement in general terms, and inevitably there will be some modifications and differences in detail due to the differing circumstances of the two cases ; but, broadly speaking, the two sets of proposals do correspond closely enough to comply fully with the statement made by my predecessor in this House on the 20th January 1931, that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by a decision to separate, and they correspond so closely as to satisfy also, I should have thought, the stipulation made by the Burma Legislative Council in its resolution of the 22nd December[1] for the immediate transfer to popular control of at least the same measure of responsibility, and the same subjects and powers, as will be transferred to popular control in the Indian Federation both at the Centre and in the Provinces.'

[1] See p. 310 above. [Ed.]

This statement cleared away some of the doubts, some of the fears ; it clears the atmosphere, but there is still one little one left to my mind, and it is this : Yes, we will get it now. How about 20 years hence ? Will we get the same advancement that India will get during that period ? That is not yet clear. That is one of the fears, and one of the doubts. Probably in the course of the discussion on the constitutional aspect of the problem that question will arise, and probably we shall be in a position to discuss that matter, but, in the meantime, I should like to say that our hopes and our aspirations are that we should form a separate unit, one political entity, an equal partner in that great commonwealth of nations known as the British Empire.

(B) *Opinions expressed by Dr Ba Maw*[1]

MR ISAAC FOOT : . . . You said the decision of your Association was for federation rather than for separation, in the terms of the Prime Minister's statement.

DR BA MAW : Quite so.

MR ISAAC FOOT : Was that because you did not consider the Prime Minister's statement was adequate to the Burman demand for independence, or because, whatever was proposed, federation would be the desire ?

DR BA MAW : No. May I explain this, because it is extremely important ? Our position is this : We consider the Prime Minister's proposed separation to be a non-Burmese idea of separation, and, as I tried my very best to explain yesterday, of course, 'separation' has so far been very loosely and very dangerously used. The term 'separation' has meant a mass of loose things to the average Burman. To a considerable number of people it still means an independent and a royal Burma. Separation to another section means Burma for the Burmans ; and separations for a third section, that is, the economic section, means purely the doubtful economic advantages of expelling the foreigners and of effecting the restoration of all the lands to Burmans. Therefore, we faced the problem in a concrete and practical way. We say that we oppose the Prime Minister's separation because it does not conform with our ideas of separation, and as this form of separation is unsuitable to us we oppose it.

* * *

MARQUESS OF SALISBURY : . . . If you got separation on your own terms, which would you prefer—separation or federation ?

DR BA MAW : If we got separation on our own terms, any Burman would accept it on those terms. After all, we are approaching it as a very practical proposition, as I submit any other part of the British Empire would approach it. So that, on the basis of that argument, if the terms that we require are guaranteed to us under separation, we would accept separation.

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[1] *The Joint Committee on Indian Constitutional Reform*, vol. II, *Records*, A 1 and 2, B 1, 2 and 3, and C 1, 2 and 3, pp. 163-73.

Dr Ba Maw was the leader of the Anti-Separationist League. [Ed.]

DR BA MAW : I thought I made myself completely clear on this point. I am against both the terms of the separation as contained in the Burma White Paper as well as the terms of federation as contained in the India White Paper. That is my complete attitude towards the constitutional part of the question, but if I am faced with these two alternatives, on the principle of the lesser evil, I and U Chit Hlaing prefer the federal alternative.

LORD EUSTACE PERCY : And you prefer committing yourselves at this moment to permanent federation ?

DR BA MAW : If I have no choice. As I explained, the December resolution[1] still contains our complete demand. If we cannot get the terms of the December resolution we are forced by circumstances to accept the next best thing : that is the federal alternative.

LORD EUSTACE PERCY : But, Dr Ba Maw, you say, ' the federal alternative ' in general terms.

DR BA MAW : Exactly.

LORD EUSTACE PERCY : But you choose that, knowing that it means permanent federation.

DR BA MAW : With all its consequences.

LORD EUSTACE PERCY : May I explain, in order that I may not appear to be laying a trap for you, what is in my mind ? It has been obvious, I think, from all our discussions on the India White Paper that whatever may be the views of various sections of Indian opinion as to developments in the future, no section of Indian opinion anticipates that the Provinces, as against the Centre, will have wider powers or a wider autonomy in the future than they would have at the beginning of the federation. Therefore, Burma in entering Federation on a permanent basis, would be permanently committed to a restriction to the Provincial powers as laid down in the White Paper. I am not now bringing into the question anything about the Governor's Special Responsibilities or the degree of responsible government. I am only talking of the powers of the Province as compared with the powers of the Centre. Therefore, you would be permanently committing yourselves to the Burma Legislature having no more power than is provided for a Province in the India White Paper permanently. Are you prepared to accept that as what you call the next best alternative.

DR BA MAW : Yes.

* * *

MAJOR C. R. ATTLEE : . . . I was really asking for your personal point of view as a practical politician, looking at the thing—not what the verdict of the country was ; but in what respects you thought it was better.

DR BA MAW : Because, to give a short answer to that, we feel that it is safer to be in the Indian Federation than to separate on the proposed terms.

MAJOR C. R. ATTLEE : Safer for whom ?

DR BA MAW : Safer economically, politically, and in various other respects.

[1] See p. 310 above. [Ed.]

MAJOR C. R. ATTLEE : Safer economically : Do you think Burma cannot run itself financially ; is that right ?

DR BA MAW : I am absolutely certain.

MAJOR C. R. ATTLEE : You think there will be more money to spend in Burma if you belong to the Federation.

DR BA MAW : I think that we will get more benefit out of the moneys actually spent.

MAJOR C. R. ATTLEE : Do you anticipate that the finances of Burma are likely to improve, or is this a reason for permanent federation, because you think that Burma is so constituted that it never can stand alone ?

DR BA MAW : Because at present, to my mind—I may be taking a very dark view of things—as things are, Burma is an entirely agricultural country. We are entirely dependent, as far as the masses go, upon rice, and in the present world conditions I think that it will take us very many more lean years before we can recover from the present depression, and during that time and in the years to follow, if we are in the Federation, Indian credit and Indian trade will save the situation.

MAJOR C. R. ATTLEE : Do you mean with the credit of the Government of India behind you ?

DR BA MAW : Exactly.

MAJOR C. R. ATTLEE : Is not it a fact that at present Burma pays a considerable contribution to the Government of India which suggests on any financial adjustment she would pay less ?

DR BA MAW : That is a question that has received various answers. My point of view is that the money we are actually paying is not to India but to the Central subjects in India. The Central subjects will always be there and under the proposed Constitution in the Burma White Paper those Central subjects will be directly under the control of the Governor and the financial adviser. Therefore, whether those Central subjects are in India proper or whether they are in Burma, we must contribute these revenues towards their control, and so long as those Central subjects are not in Burmese hands we shall not have much say in their management. So long as that is a fact, which will be so under the proposed Burma White Paper Constitution, Burmans do not have much of a choice between the two. Whether the Central subjects are managed in India or in Burma they will not be under popular control. Therefore the moneys that we pay will, whether it be federation or whether it be separation, not be controlled by our popular Legislature under the proposed Constitution.

MAJOR C. R. ATTLEE : I take your answer. I could not quite agree, perhaps, on the financial settlement. Your second point was that it would be politically better for Burma to be in the Indian Federation. What did you mean by that ?

DR BA MAW : Politically, looking to the future, it is my personal conviction that it will be the day for federations ; that the position of the bigger and the stronger countries will be very appreciably better than the position of the smaller and isolated countries ; and my statement is based upon that personal conviction, that we shall receive better protection and we shall feel greater benefit all round in a Federation, unless, of course, decidedly greater benefits than what we can derive from a Federation are guaranteed to us in our Constitution. I am

approaching the subject entirely as a practical man. If I have to choose between two things, I say, as a practical man, that a proposition that ensures greater benefits to my country is the proposition that I must accept.

MAJOR C. R. ATTLEE : Of course, you have ruled out independence altogether on financial grounds, so we can leave that aside, because you have said that Burma cannot stand alone financially. So with you it is merely a question whether you would like to join up with this Federation or that Federation. Is not that so ?

DR BA MAW : In our present circumstances.

MAJOR C. R. ATTLEE : How do you mean ?

DR BA MAW : So long as we do not have effective control of all the subjects, particularly finance, I consider that it will be more advantageous for Burma to be in the Indian Federation.

MAJOR C. R. ATTLEE : Do you suggest that your financial resources would be increased if you were entirely independent, and therefore you could manage, if you were entirely independent, while you could not manage as long as there was any other control than your own ?

DR BA MAW : My personal conviction is that if we had effective control of the subjects we could very easily balance our Budget, and as long as we could balance our Budget and ensure two full meals a day to our agriculturists, to our masses, I should be very happy.

MAJOR C. R. ATTLEE : That seems to me rather to conflict with your last point, that as a purely agricultural country you never could expect to stand by yourselves.

DR BA MAW : I am talking of the present circumstances, where our finances are not under popular control ; facts are facts ; with the result that before we can talk about our money, half of it or more is expended upon subjects over which we have absolutely no control.

(C) *Speech by Sir Samuel Hoare, Secretary of State for India 7th December, 1933*[1]

There is a third argument that has been used against separation that we have by no means ignored. I have seen it suggested that Burma has on the whole gained political strength by its association with India, and I would not at all dissent from that view ; that having gained political strength in the last 15 years, from the point of view of Burma, it would be wiser not to break the situation, but as the result of maintaining this political association with India, Burma in the future will be able to obtain better constitutional terms than she could obtain now. My Lord Chairman, that line of argument seems to me to presuppose two conditions. It seems to me, first of all, to presuppose the right of Burma to secede from the Indian Federation. It seems to me also to assume the right of Burma to obtain preferential treatment as compared with the treatment of the Provinces of British India. Now upon both these points I can state my own view, and I can state the view of the Government ; upon neither of them do I wish to prejudge the views of my colleagues upon the Committee, but stating my own views and the views of the Government, I can say very definitely that both those conditions strike at the

[1] *Report of the Joint Committee on Indian Constitutional Reform*, vol. II, *Records*, A 1 and 2, B 1, 2 and 3, and C 1, 2 and 3, p. 156.

very root of the permanent Federation that we have been considering for India. It is not that we wish to put a pistol at the throats of our friends from Burma and thrust them upon the horns of an impossible dilemma. It is simply this, that those two conditions strike at the very root of any permanent Federation, and, in the interests of permanent Federation, that is what, after all, the Government have been considering incessantly for the last three years, the British Government can never accept them. My Lord Chairman, it is interesting to note that I do not think a single one of the Indian delegates who were here until a few weeks ago would accept them either. There was a little talk based upon misunderstanding at one time of the rights of the Princes to secede from the Indian Federation. When we went further into the details of the question, we found that the Princes made no such demand, and it was quite clear that if they had made such a demand, not a single representative from British India would have accepted it. I was therefore very glad to note a passage in Dr Ba Maw's interesting speech when he said that the Anti-Separationists in this respect demanded no more than the Indian Princes. I can tell him that the Indian Princes made no such demand and that if they had made such a demand, no Indian delegate would have accepted it. Let me again make it clear that these conditions, namely, that we could not admit either the right of secession or preferential treatment for federation, are not directed in any way against Burma. They are conditions that are absolutely inherent in any system of government that is likely to remain permanent in India.

(4) *Report of the Joint Committee on Indian Constitutional Reform, 1934*[1]

420. The active political leaders in Burma who accepted as a first instalment the measure of self-government afforded by provincial Dyarchy, did not on that account abandon their conviction that both on racial and on economic grounds it would be better for Burma to pursue her own distinct line of development at the first possible opportunity, and foresaw that such an opportunity would be likely to occur after the ten-year period prescribed in the Act of 1919. Accordingly they took their seats in the Legislative Council, and when the time came, stated their opinions freely to the Indian Statutory Commission, who reported that they had little doubt that the resolution passed unanimously by the Legislative Council during their visit to Burma in favour of separation from India was the verdict of the country as a whole. On the other hand, the party which in 1922 had boycotted the Whyte Committee and had refused to enter the Legislative Council or co-operate in a dyarchical form of government, stood aloof and tendered no evidence before the Commission. Their unhelpful tactics have tended to obscure the fact that they too seek, and have steadfastly sought, as their ultimate objective, Burma's independence of India and the development of the country on separate lines. The difference between them and what we may call the co-operating parties has, we think, been mainly one of tactics. Whereas the latter are and have been prepared to accept what is granted to the rest of India as a stepping stone to something better, the non-co-operators persist

[1] *Report of the Joint Committee on Indian Constitutional Reform* (1934), pars 420-2.

in rejecting every offer made and in standing out on every occasion for the impossible, in the belief that thereby they increase the prospect of extracting from the British Government and Parliament a more liberal constitutional scheme for Burma. They took the opportunity afforded by the election campaign in 1932 (which was to give the electorate a means of expressing through their elected members their views on the question of separation) to excite a wave of feeling not so much against the idea of separation as against the Constitution for a separated Burma outlined by His Majesty's Government at the close of the Burma Round Table Conference, on the ground that it, too, was, as it undoubtedly and inevitably is, dyarchical in nature. Having decided to reject the Constitution held out as a concomitant of separation, they found it difficult to distinguish this policy from opposition to separation in the abstract ; and, describing themselves for the purposes of the election as ' Anti-Separationists ', they were driven to advocating the only possible alternative, that is, inclusion in the Federation.

421. We have satisfied ourselves by discussion with the Delegates from Burma representing the anti-separationist parties that they have no real desire to see Burma included in an Indian Federation ; and indeed they frankly admit that on their own terms they would unhesitatingly prefer separation. The policy they have adopted contemplates only the inclusion of Burma in the Indian Federation on the basis of special financial and fiscal conditions (which in our judgement would be inconsistent with the fundamentals of a federal system), and on the understanding that at her chosen moment Burma would be at liberty to secede. We have no hesitation in describing this policy as wholly impracticable, and we can affirm that the Delegates from India who have been associated with us have just as little hesitation in ruling it out as incompatible with the conception of federation. Its adoption by the Burman anti-separationist leaders is to be explained, we believe, by the mistaken idea that if Burma, as a unit of the Indian Federation, were to take part in such further advances towards full responsible self-government as may be made by the Federation, she would on leaving it at the moment of her choice start off on her own separate course so much further forward in the direction of her ultimate constitutional goal. Criticism in detail of this conception of future possibilities would involve us in dangerous fields of speculation ; and we think it sufficient to record our opinion that, even if Burma could be permitted to enter the Indian Federation and to leave it at will, it is certain that Parliament would still regard it as its function to regulate her constitutional status and her relations with other possessions of the Crown. The inference which we draw from our examination of the course pursued by the Burman Anti-Separationists is that, in fact, they desire the separation of their country from India, but are distrustful of the consequences which may follow if the step is taken now ; and we see no reason to dissent from the conclusion at which the Statutory Commission arrived that ' so far as there is public opinion in the country it is strongly in favour of separation ' ; nor do we believe that a recommendation in this sense would seriously offend Burman sentiment in any quarter.

422. The question is not, however, one to be decided solely on considerations of sentiment. The Statutory Commission adduced many

other most cogent grounds for the separation of the two countries—the absence of common political interests with continental India, the constant and increasing divergence of economic interests, the financial inequities (as they appear in Burman eyes) which association with India inevitably entails, and the fact that the indigenous peoples of Burma belong to the Mongolian group of races and are distinct from the Indian races in origins, in languages, and by temperament and traditions. They were also of opinion that separation should take place at once. 'We base our recommendation', they observed, 'that separation should be effected forthwith on the practical ground that no advantage seems likely to accrue from postponement of a decision to a future date. The constitutional difficulties of securing Burman participation in the Central Government of India are not prospective but actual. They will grow with every advance in the Indian Constitution and will prejudicially affect not Burma only but India itself.'[1] By the emergence into the field of practical politics of the proposal for an Indian Federation these arguments are greatly reinforced. Federation would not come into being simultaneously with Provincial Autonomy; but already there are projects directly or indirectly ancillary to Federation which are rapidly taking shape, and the more deeply Burma became involved in these as a result of her present position as a Province of British India, the more difficult would be her disentanglement from them hereafter. We are, therefore, clearly of opinion that the separation of Burma, if it is to be effected at all, should not be postponed.

VII. Speech by Mr Bhulabhai Desai on the Report of the Joint Parliamentary Committee on Indian Constitutional Reform, 4 February 1935[2]

After all, there are five aspects of every Government worth the name: (*a*) The right of external and internal defence and all measures for that purpose; (*b*) The right to control our external relations; (*c*) The right to control our currency and exchange; (*d*) The right to control our fiscal policy; (*e*) the day-to-day administration of the land. These are the five aspects which principally compose any Government. You may forge any Constitution you like, you may have 300 or 400 sections of an Act, but these five aspects sum up the outlines of every single Constitution. Looking at it in that outline, by a single stroke of the pen, call it Reserved subjects or by any other name, what is it that is taken away and what is it that is left? You shall have nothing to do with external affairs. You shall have nothing to do with defence. You shall have nothing to do, or, for all practical purposes in future, you shall have nothing to do with your currency and exchange, for indeed the Reserve Bank Bill just passed has a further reservation in the Constitution that no legislation may be undertaken with a view to substantially alter the provisions of that Act except with the consent of the

[1] *Indian Statutory Commission Report*, 1930, vol. II, par. 224.

[2] Legislative Assembly Debates (1935), Official Report, vol. I, pp. 279-80. Mr Bhulabhai Desai was the leader of the Congress Party in the Indian Legislative Assembly. [Ed.]

Governor-General. It also appears from the Bill, as it is drafted, that our greatest national asset, to wit, the State Railways of India, are going almost to share a similar fate in so far as we have or can exercise any authority or power or control. That leaves us still with the 'discretionary powers', the 'Special Responsibilities', the veto which exists as a representative of the Crown, but more than that the positive power of individual personal legislation, the positive power of enthroning himself on the very throne of India itself as an absolute and sole dictator. That is the Central Constitution. Added to that, you have two Chambers, including elements which time does not permit me to examine in detail. The fact, therefore, remains that there is no real power conferred in the Centre. With what sense of responsibility, with what sense of honour and with what sense of self-respect, and with what hope could we look forward to the future under such a Constitution ? In so far as control and authority over questions of defence and army are concerned, it is a lamentable fact that it is not merely a question of pounds, shillings and pence (though that itself is the greatest burden that India has borne, patiently borne, during the last some 150 years), but it is the moral aspect from which we have to look at it, namely demoralization of the race which is the greater and the more insidious source of ruin. It must be remembered and it is admitted indeed that we have all the talents in individual man. Are talents wanting on the other side in those of my race who stand and form part of the present Constitution ? You can find Indian administrators, you can find Indian soldiers, you can find Indian economists, you can find Indian scientists and yet how does it happen that, with all those talents, the one thing that we do not find is that those put together do not compose and solely form the self-government of this land ? (Hear, hear.) It is the incubus from the top, notwithstanding the possession of all those talents which prevents each of them functioning to the best of his ability and it is the daily deteriorating strength and initiative of the human mind which it is for us to arrest and restore and it is for that, more than for any other reason, that I stand here before this House to emphatically say that notwithstanding the talents, it is that domination and domination alone which prevents you being what you are and of which you have the capacity of being in your own land. (Hear, hear.) (Applause.) This is a true picture of the Government of India under the proposed Constitution. That is the Government that is offered you. That is the Government that is going to be imposed upon you, for they are forging this Constitution, almost rushing the Bill which, on their own acknowledgement, the Indian people do not desire.

Coming to the Provinces, and with great deference to my Honourable friend, Mr Jinnah, there is little to choose between the two. When you come to the Provinces what is it that is left ? India, I think it is confessed even by those who sit on the other side, has reached the uttermost capacity of taxation. Therefore, there is no more money to be found, and yet we are told that for this great and honoured institution that is coming into being, we shall have to find some 20 crores more for the purpose of feeding this white elephant ; and, added to that, when all the sources of revenue have dried up, you say we have responsible Ministers in the Centre. They will all be elected from among the elected

representatives, but you put the Indians into this unfortunate and difficult position, that they are between the devil and the deep sea—I do not say which is which—between the extraordinary powers placed in the hands of the Governor on the one hand and the great Services for which undoubtedly a great deal is claimed, the Services who ought to be their ministerial subordinates but who are going to have a back-door influence against those under whom they are going to serve ; between the protected Services (if I may use that expression) and between the unprotected Governor with all his powers and with no money and resources at his disposal for any nation-building purposes. Why offer this mockery of what is called Provincial Autonomy ? That is Provincial Autonomy properly and actually translated in action. Let us be not deceived by form, let us always remember the substance, for indeed there can be many a form by which you can be deceived. It is the soul that matters and not the form. With that central Dyarchy and the Provincial Autonomy of the type that I have described, this House is faced today. And that is what the House has got to consider.

VIII. Sir Samuel Hoare, Secretary of State for India, on the Preamble to the Government of India Act, 6 February 1935[1]

The House will observe that the Bill, like most modern Bills, contains no Preamble. There have, it is true, been important Acts in the past, among them the Government of India Act, 1919, to which a statement of policy and intentions was prefixed. There is, however, no need for a Preamble in this case, as no new pronouncement of policy or intentions is required. The Preamble to the Act of 1919 was described by the Joint Committee in their Report as having ' set out finally and definitely the ultimate aims of British rule in India'. The Committee, after full consideration, further asserted that ' subsequent statements of policy have added nothing to the substance of this declaration ', which they then proceed to quote in full in their Report as, in their own words, ' settling once and for all the attitude of the British Parliament and people towards the political aspirations ' of India. If the Committee were justified in their statements—and the Government consider that they were fully justified—there is surely nothing to be gained by reiterating words which have settled once and for all the attitude of Parliament to the Indian problem. Moreover, in government, and above all in the government of the Indian Empire, continuity of policy is of the first importance. No Government and no Parliament can treat lightly any statement issued under the authority of their predecessors. But, once the aim of a policy has been clearly determined and accepted, significance attaches not to its reiteration but to the concrete measures taken in pursuance of it. The position of the Government therefore, is this : They stand firmly by the pledge contained in the 1919 Preamble, which it is not part of their plan to repeal, and by the interpretation put by the Viceroy in 1929,[2] on the authority of the Government of the day, on that Preamble that ' the natural

[1] *Debates on Indian Affairs : House of Commons* (Session 1934-5), cols 463-4.
[2] See pp. 225-9 above. [Ed.]

issue of India's progress as there contemplated, is the attainment of Dominion Status '. The declaration of 1929 was made to remove doubts which had been felt as to the meaning of the Preamble of 1919. There is, therefore, no need to enshrine in an Act words and phrases which would add nothing new to the declaration of the Preamble. In saying that we stand by our pledges I include, of course, not only pledges given to British India, and to Burma as part of British India, but also our engagements with the Indian States.

Rightly understood, the Preamble of 1919, which I repeat will stand unrepealed, is a clear statement of the purpose of the British people, and this Bill is a definite step, indeed a great stride, forward towards the achievement of that purpose. It is by acts and not by words that we claim to be judged. It is clear that we can only reach the end we have plainly set before ourselves when India has succeeded in establishing the conditions upon which self-government rests, nor will its attainment be delayed by any reluctance on our part to recognize these conditions when they actually exist.

IX. Extracts from the Government of India Act, 1935

Chapter 42 (25 & 26 Geo. V)

An Act to make further provision for the government of India.

[2nd August 1935.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Part I

INTRODUCTORY

1. *Short title.*

Government of India by the Crown.

2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any

Governor or any Local Government, whether by delegation from His Majesty or otherwise.

The Governor-General of India and His Majesty's Representative as regards relations with Indian States.

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(*a*) all such powers and duties as are conferred or imposed on him by or under this Act ; and

(*b*) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connexion with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

The Commander-in-Chief in India.

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

Part II

THE FEDERATION OF INDIA

CHAPTER I

Establishment of Federation and Accession of Indian States

Proclamation of Federation of India.

5. (1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India—

(*a*) the Provinces hereinafter called Governors' Provinces ; and

(*b*) the Indian States which have acceded or may thereafter accede to the Federation ;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(*a*) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State ; and

(*b*) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

Accession of Indian States.

6. (1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

(*a*) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act ; and

(*b*) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession :

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act :

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references

to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

CHAPTER II

THE FEDERAL EXECUTIVE

The Governor-General

Functions of Governor-General.

7. (1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act.

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Extent of executive authority of the Federation.

8. (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

(*a*) to the matters with respect to which the Federal Legislature has power to make laws ;

(*b*) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment ;

(*c*) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas :

Provided that—

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;

(ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State ;

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India ; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

Administration of Federal Affairs

Council of Ministers.

9. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this subsection shall be construed as preventing the Governor-General from exercising his individual judgement in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgement, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgement.

Other provisions as to ministers.

10. (1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive

months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas.

11. (1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

Special responsibilities of Governor-General.

12. (1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ;

(*b*) the safeguarding of the financial stability and credit of the Federal Government ;

(*c*) the safeguarding of the legitimate interests of minorities ;

(*d*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests ;

(*e*) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation ;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgement, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgement as to the action to be taken.

Provisions as to Instrument of Instructions.

13. (1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superintendence of Secretary of State.

14. (1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgement, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

15. *Financial Adviser to Governor-General.*

16. *Advocate-General for Federation.*

Conduct of business of Federal Government.

17. (1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under sub-sections (2), (3) and

(4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

CHAPTER III

The Federal Legislature

General

Constitution of the Federal Legislature.

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as 'the Federal Assembly').

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

19-29. *Refer to certain general provisions regarding Federal Legislature and its Members such as prorogation and dissolution, officers of the Legislature, privileges of Members, salaries and the like.*

Legislative Procedure

Provisions as to introduction and passing of Bills.

30. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

Joint sittings of both Chambers in certain cases.

31. (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(*a*) the Bill is rejected by the other Chamber ; or

(*b*) the Chambers have finally disagreed as to the amendments to be made in the Bill ; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgement, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly :

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

(*a*) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

Assent to Bills and power of Crown to disallow Acts.

32. (1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure :

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Procedure in Financial Matters

Annual financial statement.

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the ' annual financial statement'.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation ; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation :

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser ;

(*d*) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court ;

(*e*) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;

(*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ;

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;

(*h*) any sums required to satisfy any judgement, decree or award of any court or arbitral tribunal ;

(*i*) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

Procedure in Legislature with respect to estimates.

34. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (*a*) or paragraph (*f*) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber

shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

Authentication of schedule of authorized expenditure.

35. (1) The Governor-General shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the Chambers under the last preceding section ;

(*b*) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature :

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorized unless it is specified in the schedule so authenticated.

36. *Supplementary statements of expenditure.*

37. *Special provisions as to financial Bills : Provides that financial Bills should not be introduced or moved except on the recommendation of the Governor-General.*

Procedure Generally

38-40. *Refer to rules of procedure in the Legislature.*

41. *Lays down that the courts have no power to inquire into proceedings of the Legislature.*

CHAPTER IV

Legislative Powers of Governor-General

Power of Governor-General to promulgate Ordinances during recess of Legislature.

42. (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor-General—

(*a*) shall exercise his individual judgement as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature ; and

(*b*) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions ;

(*b*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General ; and

(*c*) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects.

43. (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgement, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act

of the Federal Legislature assented to by the Governor-General ;

(*b*) may be withdrawn at any time by the Governor-General ; and

(*c*) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Power of Governor-General in certain circumstances to enact Acts.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgement, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(*a*) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary ; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (*b*) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

CHAPTER V

Provisions in Case of Failure of Constitutional Machinery

Power of Governor-General to issue Proclamations.

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(*a*) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion ;

(*b*) assume to himself, all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority :

Provided that nothing in this subsection shall authorize the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;

(*b*) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Part III

THE GOVERNORS' PROVINCES

CHAPTER I

The Provinces

Governors' Provinces.

46. (1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) *Defines the expressions 'Province' and 'Provincial'.*

47. *Provisions as to Berar.*

CHAPTER II

The Provincial Executive

The Governor

Appointment of Governor.

48. (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Executive authority of Province.

49. (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.

Administration of Provincial Affairs

50-51. *The Council of Ministers and other provisions as to Ministers corresponding to Sections 9 and 10 above.*

52. *Special responsibilities of Governor : Corresponding to section 12 above. Provisions for the protection of the excluded areas and Berar also included.*

53. *Provisions as to the Instrument of Instructions : Corresponding to section 13 above.*

Superintendence of Governor-General.

54. (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgement, he shall be under the general control of, and comply with such particular directions, if any, as may

from time to time be given to him by, the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

55. *Advocate-General for Province.*

Provisions as to police rules.

56. Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgement with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organization or discipline of that force.

Provisions as to crimes of violence intended to overthrow Government.

57. (1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) While any such direction is in force, the Governor may authorize an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorized may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

Sources of certain information not to be disclosed.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(*a*) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion ; or

(*b*) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

59. *Conduct of business of the Provincial Government : Corresponding to section 17 above.*

CHAPTER III

THE PROVINCIAL LEGISLATURE

General

Constitution of Provincial Legislatures.

60. (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(*a*) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(*b*) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

Composition of Chambers of Provincial Legislatures.

61. (1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof, shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

62-72. *Refer to certain general provisions regarding the Provincial Legislatures and their members such as prorogation and dissolution, officers of the Legislature, privileges of members, salaries and the like.*

Legislative Procedure

73-77. *Legislative procedure : Corresponding to sections 31-2 above. Only in the case of the Provincial Legislatures, a joint sitting of the two Chambers to be held if no agreement is reached between them within 12 months, instead of 6 months as in the case of the Federal Legislature.*

Procedure in Financial matters

78-80. *Annual financial statement, etc. : Corresponding to sections 33-5 above.*

81. *Supplementary statements of expenditure.*

82. *Special provisions as to financial Bills : Corresponding to section 37 above.*

83. *Provides for educational grants for the benefit of the Anglo-Indian and European communities.*

Procedure generally

84-87. *Refer to procedure generally in the Legislature.*

CHAPTER IV

LEGISLATIVE POWERS OF GOVERNOR

88-90. *Corresponding to sections 42-4 above.*

CHAPTER V

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS

91-92. *Provide for the creation and administration of excluded and partially excluded areas and their administration.*

CHAPTER VI

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

93. *Power of Governor to issue proclamations : Corresponding to section 45 above. The functions of the Governor under this section to be exercised by him in his discretion.*

Part IV

THE CHIEF COMMISSIONERS' PROVINCES

94-98. *Provide for the administration of the Chief Commissioners' Provinces which are enumerated as follows : 'the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act'.*

Part V

LEGISLATIVE POWERS

CHAPTER I

DISTRIBUTION OF POWERS

Extent of Federal and Provincial laws.

99. (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(*a*) to British subjects and servants of the Crown in any part of India ; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be ; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be ; or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be ; or

(*e*) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

Subject matter of Federal and Provincial laws.

100. (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the ' Federal Legislative List ').

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the ' Concurrent Legislative List ').

(3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the ' Provincial Legislative List ').

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

Extent of power to legislate for States.

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Power of Federal Legislature to legislate if an emergency is proclaimed.

102. (1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a ' Proclamation of Emergency ') that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List :

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repug-

nancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(*a*) may be revoked by a subsequent Proclamation ;

(*b*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ; and

(*c*) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make, shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Power of Federal Legislature to legislate for two or more Provinces by consent.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

Residual powers of legislation.

104. (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

105. *Application of Naval Discipline Act to Indian naval forces.*

Provisions as to legislation for giving effect to international agreements.

106. (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

Inconsistency between Federal laws and Provincial, or State, laws.

107. (1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter :

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void.

CHAPTER II

Restrictions on Legislative Powers

Sanction of Governor-General or Governor required for certain legislative proposals.

108. (1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or

(*c*) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion ; or

(*d*) repeals, amends or affects any Act relating to any police force ; or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(*f*) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British

India to greater taxation than companies wholly controlled and managed therein ; or

(*g*) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(*a*) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General ; or

(*c*) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion ; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned ;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor ; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

109. *Requirements as to previous sanctions or recommendation of the Governor-General or Governor in certain cases to be regarded as matters of procedure only.*

Savings.

110. Nothing in this Act shall be taken—

(*a*) to affect the power of Parliament to legislate for British India, or any part thereof ; or

(*b*) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts ; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgement ; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

CHAPTER III

PROVISIONS WITH RESPECT TO DISCRIMINATION, ETC.

British subjects domiciled in the United Kingdom.

111. (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—

(*a*) imposes any restriction on the right of entry into British India ; or

(*b*) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction.

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

112-15. *Taxation : Provide against discriminatory taxation in respect of British subjects domiciled in the United Kingdom and companies incorporated and ships registered in the United Kingdom.*

116. *Company incorporated in the United Kingdom not to be discriminated against in respect of subsidies for the encouragement of trade or industry, provided :*

(*a*) *the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State ; and*

(*b*) *such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects*

domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State ; and

(c) *the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.*

117. *Supplemental.*

Power to secure reciprocal treatment by convention.

118. (1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

119-21. *Provisions to safeguard persons holding British medical and other professional and technical qualifications, officers of the Indian Medical Service, etc.*

Part VI

ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES

General

Obligation of units and Federation.

122. (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

(2) The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

123-5. *Provisions for enabling the Provincial and the State Governments to act as agents in the administration of Federal Acts.*

Control of Federation over Province in certain cases.

126. (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorizes the giving of such directions :

Provided that a Bill or amendment which proposes to authorize the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance :

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

127. *Acquisition of land for Federal purposes.*

Duty of Ruler of a State as respects Federal subjects.

128. (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit :

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

Broadcasting

129. *Broadcasting.*

Interference with Water Supplies

130-4. *Provide for the settlement of disputes between the units of the Federation in respect of water supply with an ultimate right of appeal to His Majesty in Council.*

Inter-Provincial Co-operation

Provisions with respect to an Inter-Provincial Council.

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

(*a*) inquiring into and advising upon disputes which may have arisen between Provinces ;

(*b*) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest ; or

(*c*) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

Part VII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I

Finance

Distribution of Revenues between the Federation and the Federal Units

136. *Meaning of 'Revenues of Federation' and 'Revenues of Province'.*

Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights.

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within

which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature :

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

Taxes on income.

138. (1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :

Provided that—

(*a*) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council ;

(*b*) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

(*a*) in each year of a prescribed period such sum as may be prescribed ; and

(*b*) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction :

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council ;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

'taxes on income' does not include a corporation tax;

'prescribed' means prescribed by His Majesty in Council; and

'Federal emoluments' includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income-tax is chargeable.

Corporation tax.

139. (1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

Salt duties, excise duties and export duties.

140. (1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding subsection, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products

shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

Prior sanction of Governor-General required to Bills affecting taxation in which Provinces are interested.

141. (1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression 'tax or duty in which Provinces are interested' means—

(*a*) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(*b*) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

Grants from Federation to certain Provinces.

142. Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance and different sums may be prescribed for different Provinces:

Provided that, except in the case of the North West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.

143. *Savings.*

144. *Calculation of 'net proceeds', etc.*

The Crown and the States

Expenses of the Crown in connexion with Indian States.

145. There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

Payments from or by Indian States.

146. All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

Remission of States contributions.

147. (1) Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(*a*) in return for specific military guarantees, or

(*b*) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

(*a*) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs ; and

(*b*) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State ; and

(*c*) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter ' cash contributions ' means—

(*a*) periodical contributions in acknowledgement of the suzerainty of His Majesty, including contributions payable in connexion with any arrangement for the aid and protection of a State by

His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connexion with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent ;

(*b*) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalization of the value of exchanged territory ;

(*c*) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter ' privilege or immunity ' means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

(*a*) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt ;

(*b*) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt ;

(*c*) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph ;

(*d*) privileges in respect of free service stamps or the free carriage of State mails on government business ;

(*e*) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question ; and

(*f*) the right to issue currency notes,

not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

Certain payments to Federated States, etc., to be charged on Federal revenues.

148. Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

Value of privileges and immunities to be set off against share of taxes, etc., assigned to Federated States.

149. Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account, shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

Miscellaneous Financial Provisions

150-1. *Miscellaneous financial provisions such as custody of public moneys, etc.*

Exercise by Governor-General of certain powers with respect to Reserve Bank.

152. (1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

(*a*) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office ;

(*b*) the appointment of an officiating Governor or Deputy Governor of the Bank ;

(*c*) the supersession of the Central Board of the Bank and any action consequent thereon ; and

(*d*) the liquidation of the Bank.

(2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgement.

Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage.

153. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

154-60. *Miscellaneous financial provisions such as exemption of certain public property from taxation, relief from double taxation in India and Burma, etc.*

CHAPTER II

BORROWING AND AUDIT

Borrowing

Cessation of borrowing by Secretary of State in Council.

161. Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this section affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

162-5. *Regulate borrowing by Federal and Provincial Governments.*

Audit and Accounts

166-71. *Audit and accounts.*

CHAPTER III

PROPERTY, CONTRACTS, LIABILITIES, AND SUITS

172-80. *Miscellaneous Provisions. Property, contracts, liabilities and suits.*

Part VIII

THE FEDERAL RAILWAY AUTHORITY

181. *Creates a Federal Railway Authority and lays down its functions.*

Composition, etc., of Railway Authority.

182. (1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

(2) Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income-tax :

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

Directions and principles to be observed by Railway Authority.

183. (1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor-General in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities

of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgement, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgement, and the Authority shall give effect to any directions so issued to them.

Conduct of business between Railway Authority and Federal Government.

184. (1) The Governor-General exercising his individual judgement, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve any special responsibility of the Governor-General.

185-99. *Detailed provisions regarding the conduct of business by the Federal Railway Authority.*

Part IX

THE JUDICATURE

CHAPTER I

The Federal Court

Establishment and constitution of Federal Court.

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years :

Provided that—

(*a*) a judge may by resignation under his hand addressed to the Governor-General resign his office ;

(*b*) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of

misbehaviour or of infirmity of mind or body, if the Judicia Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(*a*) has been for at least five years a judge of a High Court in British India or in a Federated State ; or

(*b*) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing ; or

(*c*) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

Provided that—

(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader ; and

(ii) in relation to the Chief Justice of India, for the references in paragraphs (*b*) and (*c*) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) *Oath to be taken by a judge of the Federal Court.*

Salaries, etc., of judges.

201. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

202. *Temporary appointment of acting Chief Justice.*

203. *Seat of Federal Court.*

Original jurisdiction of Federal Court.

204. (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

(*a*) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State ; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State ; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute ;

(*b*) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgement other than a declaratory judgement.

Appellate jurisdiction of Federal Court in appeals from High Courts in British India.

205. (1) An appeal shall lie to the Federal Court from any judgement, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

Power of Federal Legislature to enlarge appellate jurisdiction.

206. (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgement, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(*a*) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgement, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or

(*b*) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in

part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States.

207. (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

Appeals to His Majesty in Council.

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(*a*) from any judgement of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave ; and

(*b*) in any other case, by leave of the Federal Court or of His Majesty in Council.

209-11. *Form of judgement on appeal and other details regarding enforcement of orders, etc.*

Law declared by Federal Court and Privy Council to be binding on all courts.

212. The law declared by the Federal Court and by any judgement of the Privy Council shall, so far as applicable, be recognized as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

213-18. *Power of the Governor-General to consult the Federal Court, Rules of Court, etc.*

CHAPTER II

The High Courts in British India

219-31. *Constitution of the High Courts, jurisdiction, etc.*

Part X

THE SERVICES OF THE CROWN IN INDIA

232-77. *Provisions relating to the Services of the Crown in India ncluding Defence Services and Civil Services. They deal with such matters as recruitment of personnel and conditions of service. The constitutional importance of these provisions is that, in accordance with the general structure of the Act, they vest in the Secretary of State for India and his representatives in India sufficient powers to enable them to discharge the responsibilities vested in them by the Act, and for this purpose the necessary control over and the right of protection of, members of the services, even though these members might, administratively, be normally under the control of the Ministers in the Provinces and at the Centre. The following subsection* (3) *of Section 248, illustrates the point :*

(3) *Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.*

Part XI

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT

Advisers to Secretary of State.

278. (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for re-appointment :

Provided that—

(*a*) any person so appointed may by writing under his hand resign his office to the Secretary of State ;

(*b*) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred

and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this subsection ' prescribed ' means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

279-84. *Details concerning the organization and expenses of the India Office : the salaries of the Secretary of State and his staff were to be paid out of moneys provided by Parliament.*

Part XII

MISCELLANEOUS AND GENERAL

The Crown and the Indian States

Saving for rights and obligations of the Crown in its relations with Indian States.

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

Use of His Majesty's forces in connexion with discharge of the functions of the Crown in its relations with Indian States.

286. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connexion with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

Arrangements for Governors and Provincial staff to assist in discharging functions of Political Department.

287. Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connexion with the affairs of the Province of powers and duties in connexion with the exercise of the said functions of the Crown.

Aden

288. *Aden to cease to be part of India.*

New Provinces and Alterations of Boundaries of Provinces

289-90. *New Provinces and alterations of boundaries of Provinces.*

Franchise

291. *Power of His Majesty to make provision with respect to franchises and elections.*

Provisions as to certain Legal Matters

292-6. *Provisions as to certain legal matters.*

297. *Prohibition of certain restrictions on internal trade : Provincial Legislatures or Governments prohibited from erecting barriers to internal trade.*

298. *Persons not to be subjected to disability by reason of race, religion, etc.*

299. *Compulsory acquisition of land : No acquisition without compensation. Previous sanction of the Governor-General or the Governor, as the case may be, in his discretion necessary for the introduction of a Bill in the Federal or Provincial Legislature for the abolition of zamindari and such other rights.*

300. *Protection for certain customary rights, privileges and pensions.*

301. *Repeal of certain obsolete sections.*

High Commissioner

High Commissioner for India.

302. (1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgement.

(2) The High Commissioner shall perform on behalf of the Federation such functions in connexion with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

(3) The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

General Provisions

303-11. *General provisions, and provisions regarding interpretation.*

Part XIII
TRANSITIONAL PROVISIONS

312-19. *Transitional provisions : Section* 318(1) *provided, 'Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established'.*

Part XIV
BURMA

320-476. *Burma : constitutional provisions in respect of the Government of Burma, which ceased to be part of India.*

477-8. *Commencement and repeals.*

SCHEDULES

First Schedule

COMPOSITION OF THE FEDERAL LEGISLATURE

Part I
Representatives of British India

General Qualification for Membership

[*Omitted*]

TABLE OF SEATS

The Council of State : Representatives of British India

(i) *Allocation of Seats*

1 Province or Community	2 Total seats	3 General seats	4 Seats for Scheduled Castes	5 Sikh seats	6 Muhammadan seats	7 Women's seats
Madras . . .	20	14	1	—	4	1
Bombay . . .	16	10	1	—	4	1
Bengal . . .	20	8	1	—	10	1
United Provinces .	20	11	1	—	7	1
Punjab . . .	16	3	—	4	8	1
Bihar . . .	16	10	1	—	4	1
Central Provinces and Berar . .	8	6	1	—	1	—
Assam . . .	5	3	—	—	2	—
North-West Frontier Province . .	5	1	—	—	4	—
Orissa . . .	5	4	—	—	1	—
Sind . . .	5	2	—	—	3	—
British Baluchistan .	1	—	—	—	1	—
Delhi . . .	1	1	—	—	—	—
Ajmer-Merwara .	1	1	—	—	—	—
Coorg . . .	1	1	—	—	—	—
Anglo-Indians . .	1	—	—	—	—	—
Europeans . .	7	—	—	—	—	—
Indian Christians .	2	—	—	—	—	—
Totals . .	150	75	6	4	49	6

(ii) *Distribution of Seats for Purposes of Triennial Elections*

[*Omitted*]

Table of Seats

The Federal Assembly : Representatives of British India

1	2	3	4	5	6	7	8	9	10	11	12	13
Province	Total seats	Total of General seats	General seats reserved for Scheduled Castes	Sikh seats	Muhammadan seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for representatives of commerce and industry	Landholders seats	Seats for representatives of labour	Women's seats
Madras . . .	37	19	4	—	8	1	1	2	2	1	1	2
Bombay . . .	30	13	2	—	6	1	1	1	3	1	2	2
Bengal . . .	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces .	37	19	3	—	12	1	1	1	—	1	1	1
Punjab . . .	30	6	1	6	14	—	1	1	—	1	—	1
Bihar . . .	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces and Berar . . .	15	9	2	—	3	—	—	—	—	1	1	1
Assam . . .	10	4	1	—	3	—	1	1	—	—	1	—
North-West Frontier Province . .	5	1	—	—	4	—	—	—	—	—	—	—
Orissa . . .	5	4	1	—	1	—	—	—	—	—	—	—
Sind . . .	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan .	1	—	—	—	1	—	—	—	—	—	—	—
Delhi . . .	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara . .	1	1	—	—	—	—	—	—	—	—	—	—
Coorg . . .	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats .	4	—	—	—	—	—	—	—	3	—	1	—
Totals . .	250	105	19	6	82	4	8	8	11	7	10	9

Part II

Representatives of Indian States

[*Omitted*]

Second Schedule

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE

[*Omitted*]

Third Schedule

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES

[*Omitted*]

Fourth Schedule

FORMS OF OATHS OR AFFIRMATIONS

[*Omitted*]

Fifth Schedule

COMPOSITION OF PROVINCIAL LEGISLATURES

[*Omitted, except Tables of Seats, extracted on pp. 367-8*]

Table of Seats

Provincial Legislative Assemblies

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		General Seats		Seats for representatives of backward areas and tribes	Sikh seats	Muhammadan seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for representatives of commerce, industry, mining and planting	Landholders seats	University seats	Seats for representatives of labour	Seats for Women				
Province	Total seats	Total of General seats	General seats reserved for Scheduled Castes											General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces . .	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North-West Frontier Province . . .	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.
In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.
In Assam and Orissa the seats reserved for women shall be non-communal seats.

Table of Seats

Provincial Legislative Councils

1 Province	2 Total of seats	3 General seats	4 Muhammadan seats	5 European seats	6 Indian Christian seats	7 Seats to be filled by Legislative Assembly	8 Seats to be filled by Governor
Madras . .	Not less than 54 Not more than 56	35	7	1	3	—	Not less than 8 Not more than 10
Bombay . .	Not less than 29 Not more than 30	20	5	1	—	—	Not less than 3 Not more than 4
Bengal . . .	Not less than 63 Not more than 65	10	17	3	—	27	Not less than 6 Not more than 8
United Provinces .	Not less than 58 Not more than 60	34	17	1	—	—	Not less than 6 Not more than 8
Bihar . . .	Not less than 29 Not more than 30	9	4	1	—	12	Not less than 3 Not more than 4
Assam . .	Not less than 21 Not more than 22	10	6	2	—	—	Not less than 3 Not more than 4

Sixth Schedule

PROVISIONS AS TO FRANCHISE

[Omitted]

Seventh Schedule

LEGISLATIVE LISTS

LIST I

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments ; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment ; central intelligence bureau ; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works ; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs ; the implementing of treaties and agreements with other countries ; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication ; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organizations.

15. Ancient and historical monuments ; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.

18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation ; the provision of aerodromes ; regulation and organization of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trade marks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms ; fire-arms ; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State ; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly ; the salaries, allowances and privileges of the members of the Federal Legislature ; and to such extent as is expressly authorized by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalization.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power) ; the administration of justice ; constitution and organization of all courts, except the Federal Court, and fees taken therein ; preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof ; the salaries,

allowances and privileges of the members of the Provincial Legislature ; and, to such extent as is expressly authorized by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation ; hospitals and dispensaries ; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communications not specified in List I ; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards ; encumbered and attached estates ; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gas-works.

27. Trade and commerce within the Province ; markets and fairs ; money-lending and money-lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods ; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor ; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.

34. Charities and charitable institutions ; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III

Concurrent Legislative List

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences

against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce ; infants and minors ; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land ; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency ; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy ; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II

26. Factories.

27. Welfare of labour ; conditions of labour ; provident funds ; employers' liability and workmen's compensation ; health insurance, including invalidity pensions ; old age pensions.

28. Unemployment insurance.

29. Trade unions ; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federa authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Eighth Schedule

THE FEDERAL RAILWAY AUTHORITY

[*Omitted*]

Ninth Schedule

PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED IN FORCE WITH AMENDMENTS UNTIL THE ESTABLISHMENT OF THE FEDERATION

[*Omitted*]

Tenth to Fifteenth Schedule

[*Schedules relating to Burma : Omitted*]

Sixteenth Schedule

ENACTMENTS REPEALED

[*Omitted*]

X. THE INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL OF INDIA ISSUED UNDER THE GOVERNMENT OF INDIA ACT, 1935, 8 MARCH 1937[1]

VII. It is Our will and pleasure that Our Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities

[1] S. M. Bose, *The Working Constitution of India* (Oxford University Press, Bombay, 1939), pp. 646-9.

to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature so far as the same shall appear to him to be just and reasonable : and shall so order the administration of his Government as to further the policy of the Act for its conversion into a Federation of all India.

VIII. Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail :

And whereas at the same time it is the purpose of the Act that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy :

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces :

It is Our will and pleasure that Our Governor-General in the exercise of these powers should give unbiased consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial law or Central law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

IX. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between his Government and the Provinces and between the Provinces themselves. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Provincial Governments in the maintenance of such Central agencies and institutions for research as may serve to assist the conduct by Provincial Governments of their own affairs.

X. In particular We require Our Governor-General before giving his previous sanction to any legislative proposal which it is proposed to introduce in the Indian Legislature for the imposition or variation of taxes or duties by which the revenues of the Provincial Governments are or may be directly affected or for varying the meaning of the expression ' agricultural income ', or for alteration of the principles on which under the provisions of the Act moneys are or may be distributed to the Provinces, to ascertain by the method which appears to him best suited to the circumstances of each case the views of those Governments upon the proposal.

XI. Before granting his previous sanction to the introduction into the Indian Legislature of any Bill or amendment wherein it is proposed to authorize the Governor-General in Council to give directions to a Province as to the carrying into execution in that Province of any Act of the Indian Legislature relating to a matter specified in Part II of the

Concurrent Legislative List appended to the Act, it is Our will and pleasure that Our Governor-General shall take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure which involves the imposition of expenditure upon the revenues of the Provinces.

XII. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of an Act of the Indian Legislature, Our Governor-General while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

XIII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor-General shall not assent in Our name, to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say :

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill ;

(*c*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V, or section 299 of the Act ;

(*d*) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement.

XIV. It is further Our will and pleasure that in pursuance of the Agreement made between Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor-General in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Bill in its application to Berar has been given by virtue of the Agreement between Us and His Exalted Highness the Nizam.

XV. And generally Our Governor-General shall do all that in him lies to maintain standards of good administration ; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in public life ; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments ; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XVI. And finally it is Our will and pleasure that Our Governor-General should so exercise the trust reposed in him that the partnership between India and the United Kingdom within Our Empire may be

furthered, to the end that India may attain its due place among our Dominions.

XI. The Instrument of Instructions to the Governor of Madras issued under the Government of India Act, 1935, 8 March 1937[1]

B. *In regard to the Executive Authority of the Province.*

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgement is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the Special Responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgement ; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgement seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his Special Responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his Special Responsibility for the safeguarding of the legitimate interests of Minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said Special Responsibility as requiring him to secure a due proportion of appointments in Our

[1] N. Rajagopala Aiyangar, *The Government of India Act, 1935* (Madras Law Journal Office, Madras, 1937), pp. xiii-xvii.

Similar instructions with certain variations in respect of the North-West Frontier Province and Berar were issued to the Governors of the other Provinces. [Ed.]

Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his Special Responsibility for the securing to members of the Public Services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgement, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgement their advice would have effects of the kind which it is the purpose of the said chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his Special Responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognized, whether derived from treaty, grant, usage, sufferance or otherwise : and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province : and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve ; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any Minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our Service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his Special

Responsibility for the safeguarding of the legitimate interests of Minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

C. *Matters affecting the Legislature*

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the Special Responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say :

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill ;

(*c*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act ;

(*d*) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace and tranquillity shall not be exercised unless, in his judgement, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D. *General*

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration ; to promote all measures making for moral, social and economic welfare and tending to fit all

classes of the population to take their due share in the public life and government of the Province ; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments ; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

PART III: THE WORKING OF GOVERNMENT 1937-47

I. Amendments to the Government of India Act, 1935: The India and Burma (Emergency Provisions) Act, 1940 (3 & 4 Geo. VI, c. 33)

1. *Provisions as to India.* (1) Any power of appointment to, or removal from, any office in India (including any power as to appointments to act temporarily in an office) being a power which, apart from the provisions of this section, would be exercisable by His Majesty, shall, during the period specified in section three of this Act, be exercisable also by the Governor-General :

Provided that the foregoing provisions of this sub-section shall not apply in relation to the office of Governor-General or the office of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, but section ninety of the Government of India Act [which, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. V & 1 Edw. VIII, c. 2), provides for the temporary exercise of the powers of the Governor-General in the event of a vacancy in that office] shall apply in relation to any period during which the Governor-General is for any reason unable to perform the duties of his office as it applies in relation to the period mentioned in sub-section (1) of the said section ninety.

(2) Any provision which, under the Government of India Act, 1935, could be made—

(*a*) by an Order in Council made in accordance with the provisions of sub-section (1) of section three hundred and nine of that Act ; or

(*b*) by rules made by, or with the sanction of, the Secretary of State, may, during the period specified in section three of this Act, be made also by the Governor-General by notification in the *Gazette of India* ; and any notification made under this sub-section may be varied or revoked by a subsequent notification made thereunder or in any other manner in which such an Order in Council, or as the case may be, such rules, could be varied or revoked.

(3) Section seventy-two of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, confers on the Governor-General power to make ordinances in cases of emergency) shall, as respects ordinances made during the period specified in section three of this Act, have effect as if the words ' for the space of not more than six months from its promulgation ' were omitted ; and, notwithstanding the provision in the said section seventy-two that the power of making ordinances thereunder is subject to the like restrictions as the power of the Indian Legislature to make laws—

(*a*) ordinances may, during the said period, be made under that section affecting the Army Act, the Air Force Act, or the Naval Discipline Act ; and

(*b*) section one hundred and eleven of the Government of India Act,

1935 (which exempts certain British subjects from certain Indian laws) shall not apply to any ordinance made under the said section seventy-two during that period.

(4) The functions of the Governor-General under this section shall be deemed for the purposes of the Government of India Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion, and so much of section eighteen A of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), as provides that the expression 'Governor-General', in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, means the Governor-General in Council, shall not apply to this section.

2.[1] * * *

3. *Period during which powers are exercisable.* The period referred to in the preceding sections is the period beginning with the date of the passing of this Act and ending with such date as His Majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of this Act.

4. *Reference to be made to Secretary of State.* (1) Without prejudice to the provisions of section three hundred and fourteen of the Government of India Act, 1935, and section ten of the Government of Burma Act, 1935 (which provide for the control of the Secretary of State over the discretionary powers of the Governor-General of India and the Governor of Burma) the powers exercisable by virtue of this Act by the Governor-General of India and the Governor of Burma shall not be exercised except on the direction of the Secretary of State :

Provided that the Governor-General or the Governor, as the case may be, may exercise any such powers without any such direction if, and only if, it appears to him that it is essential that the powers should be exercised and that a previous reference to the Secretary of State is likely to cause undue delay in the exercise thereof.

(2) The validity of anything done by the Governor-General or the Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

5. *Short title.* This Act may be cited as the India and Burma (Emergency Provisions) Act, 1940.

II. Opposition to the Government of India Act, 1935

(1) *Resolution of the All-India Muslim League, 11-12 April 1936*[2]

Resolved that the All-India Muslim League enters its emphatic protest against forcing the Constitution as embodied in the Government of India Act of 1935, upon the people of India, against their will and in spite of their repeated disapproval and dissent, expressed by various parties and bodies in the country.

The League considers that having regard to the conditions prevailing

[1] Section 2 makes provision as to Burma.
[2] *All-India Muslim League, Resolutions*, 1924-36, pp. 66-7.

at present in the country the Provincial Scheme of the Constitution be utilized for what it is worth in spite of the most objectionable features contained therein, which render the real control and responsibility of the Ministry and the Legislature over the entire field of the Government and the administration nugatory.

The League is clearly of the opinion that the All-India Federal Scheme of the Central Government embodied in the Government of India Act of 1935 is fundamentally bad. It is most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis-à-vis* the Indian States, and it is calculated to thwart and delay indefinitely the realization of India's most cherished goal of complete responsible government and is totally unacceptable.

The League considers that the British Parliament should still take the earliest opportunity to review the whole situation afresh regarding the Central Scheme before it is inaugurated ; or else the League feels convinced that it would not bring peace and contentment to the people, but on the contrary it will lead to disaster if forced upon the people and persisted in as it is entirely unworkable in the interest of India and her people.

(2) *Resolution of the Indian National Congress, 12-14 April 1936*[1]

Whereas the Government of India Act, 1935, which is based on the White Paper and Joint Parliamentary Report and which is in many respects even worse than the proposals contained in them, in no way represents the will of the nation, is designed to facilitate and perpetuate the domination and exploitation of the people of India and is imposed on the country to the accompaniment of widespread repression and the suppression of civil liberties, the Congress reiterates its rejection of the new Constitution in its entirety.

The Congress, as representing the will of the Indian people for national freedom and a democratic state, declares that no Constitution imposed by outside authority and no Constitution which curtails the sovereignty of the people of India and does not recognize their right to shape and control fully their political and economic future can be accepted. In the opinion of the Congress such a Constitution must be based on the independence of India as a nation and it can only be framed by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible. The Congress therefore reiterates and stresses the demand for a Constituent Assembly in the name of the Indian people and calls upon its representatives and members in Legislatures and outside to work for the fulfilment of this demand.

In view of the fact that elections for the Provincial Legislatures under the new Act may, according to official statements, take place before the next session of the Congress, this Congress resolves that in such an event candidates should be put forward on its behalf to contest such seats in accordance with the mandate of the Congress and in pursuance of its declared policy. Such candidates must be chosen from those who fully support the Congress objective of Indian independence and pledge themselves to carry out its policy in regard to the Legislatures.

* * *

[1] *The Indian National Congress, Resolutions, 1934-6* (Allahabad), p. 77.

The question of acceptance or non-acceptance of office by Congress members elected to the Legislatures under the Constitution having been agitated in the country, the Congress, in view of the uncertainties of the situation as it may develop, considers it inadvisable to commit itself to any decision at this stage on the question and leaves it to be decided at the proper time by the All-India Congress Committee after consulting the Provincial Congress Committees.

(3) *Speech by Pandit Jawaharlal Nehru, 27 December 1936*[1]

The Government of India Act of 1935, the new Constitution, stares at us offensively, this new charter of bondage which has been imposed upon us despite our utter rejection of it, and we are preparing to fight elections under it. Why we have entered into this election contest and how we propose to follow it up has been fully stated in the election manifesto of the All-India Congress Committee, and I commend this manifesto for your adoption. We go to the Legislatures not to co-operate with the apparatus of British imperialism, but to combat the Act and seek to end it, and to resist in every way British imperialism in its attempt to strengthen its hold on India and its exploitation of the Indian people. That is the basic policy of the Congress and no Congressman, no candidate for election, must forget this. Whatever we do must be within the four corners of this policy. We are not going to the Legislatures to pursue the path of constitutionalism or barren reformism.

There is a certain tendency to compromise over these elections, to seek a majority at any cost. This is a dangerous drift and must be stopped. The elections must be used to rally the masses to the Congress standard, to carry the message of the Congress to the millions of voters and non-voters alike, to press forward the mass struggle. The biggest majority in a Legislature will be of little use to us if we have not got this mass movement behind us, and a majority built on compromises with reactionary groups or individuals will defeat the very purpose of the Congress.

With the effort to fight the Act, and as a corollary to it, we have to stress our positive demand for a Constituent Assembly elected under adult suffrage. That is the very corner-stone of Congress policy today and our election campaign must be based on it. This Assembly must not be conceived as something emanating from the British Government or as a compromise with British imperialism. If it is to have any reality, it must have the will of the people behind it, and the organized strength of the masses to support it, and the power to draw up the Constitution of a free India. We have to create that mass support for it through these elections and later through our other activities.

The Working Committee has recommended to this Congress that a convention of all Congress members of all the Legislatures, and such other persons as the Committee might wish to add to them, should meet soon after the election to put forward the demand for the Constituent Assembly, and determine how to oppose, by all feasible methods, the introduction of the federal structure of the Act. Such a convention, which must include the members of the All-India Congress Committee, should help

[1] *Presidential Address, Indian National Congress, 50th Session*, December 1936 (General Secretary, Reception Committee, 50th Indian National Congress, Faizpur), pp. 8-14.

us greatly in focusing our struggle and giving it proper direction in the Legislatures and outside. It will prevent the Congress members of the Legislatures from developing provincialism and getting entangled in minor provincial matters. It will give them the right perspective and a sense of all-India discipline, and it should help greatly in developing mass activities on a large scale. The idea is full of big possibility and I trust that the Congress will approve of it.

Next to this demand for the Constituent Assembly, our most important task will be to oppose the federal structure of the Act. Utterly bad as the Act is, there is nothing so bad in it as this Federation and so we must exert ourselves to the utmost to break this, and thus end the Act as a whole. To live not only under British imperialist exploitation but also under Indian feudal control is something that we are not going to tolerate whatever the consequences. It is an interesting and instructive result of the long period of British rule in India that when, as we are told, it is trying to fade off, it should gather to itself all the reactionary and obscurantist groups in India, and endeavour to hand partial control to the feudal elements.

The development of this Federal Scheme is worthy of consideration. We are not against the conception of a federation. It is likely that a free India may be a federal India, though in any event there must be a great deal of unitary control. But the present Federation that is being thrust upon us is a federation in bondage and under the control, politically and socially, of the most backward elements in the country. The present Indian States took shape early in the nineteenth century in the unsettled conditions of early British rule. The treaties with their autocratic rulers, which are held up to us so often now as sacred documents which may not be touched, date from that period.

It is worthwhile comparing the state of Europe then with that of India. In Europe then there were numerous tiny kingdoms and princedoms, kings were autocratic, holy alliances and royal prerogatives flourished. Slavery was legal. During these hundred years and more Europe has changed out of recognition. As a result of numerous revolutions and changes the princedoms have gone and very few kings remain. Slavery has gone. Modern industry has spread and democratic institutions have grown up with an ever-widening franchise. These in their turn have given place in some countries to Fascist dictatorships. Backward Russia, with one mighty jump, has established a Soviet Socialist State and an economic order which has resulted in tremendous progress in all directions. The world has gone on changing and hovers on the brink of yet another vast change. But not so the Indian States ; they remain static in this ever-changing panorama, staring at us with the eyes of the early nineteenth century. The old treaties are sacrosanct, treaties made not with the people or their representatives but with their autocratic rulers.

This is a state of affairs which no nation, no people can tolerate. We cannot recognize these old settlements of more than a hundred years ago as permanent and unchanging. The Indian States will have to fit into the scheme of a free India and their peoples must have, as the Congress has declared, the same personal, civil and democratic liberties as those of the rest of India.

Till recent years little was heard of the treaties of the States or of paramountcy. The rulers knew their proper places in the imperial scheme of things and the heavy hand of the British Government was always in evidence. But the growth of the national movement in India gave them a fictitious importance, for the British Government began to rely upon them more and more to help it in combating this nationalism. The rulers and their ministers were quick to notice the change in the angle of vision and to profit by it. They tried to play, not without success, the British Government and the Indian people against each other and to gain advantages from both. They have succeeded to a remarkable degree and have gained extraordinary power under the Federal Scheme. Having preserved themselves as autocratic units, which are wholly outside the control of the rest of India, they have gained power over other parts of India. Today we find them talking as if they were independent and laying down conditions for their adherence to the Federation. There is talk even of the abolition of the Viceregal paramountcy, so that these States may remain, alone in the whole world, naked and unchecked autocracies, which cannot be tampered with by any constitutional means. A sinister development is the building up of the armies of some of the bigger States on an efficient basis.

Thus our opposition to the federal part of the Constitution Act is not merely a theoretical one, but a vital matter which affects our freedom struggle and our future destiny. We have got to make it a central pivot of our struggle against the Act. We have got to break this Federation.

Our policy is to put an end to the Act and have a clean slate to write afresh. We are told by people who can think only in terms of action taken in the Legislatures, that it is not possible to wreck it, and there are ample provisions and safeguards to enable the Government to carry on despite a hostile majority. We are well aware of these safeguards; they are one of the principal reasons why we reject the Act. We know also that there are Second Chambers to obstruct us. We can create constitutional crises inside the Legislatures, we can have deadlocks, we can obstruct the imperialist machine, but always there is a way out. The Constitution cannot be wrecked by action inside the Legislatures only. For that, mass action outside is necessary, and that is why we must always remember that the essence of our freedom struggle lies in mass organization and mass action.

The policy of the Congress in regard to the Legislatures is perfectly clear; only in one matter it still remains undecided—the question of acceptance or not of office. Probably the decision of this question will be postponed till after the elections. At Lucknow I ventured to tell you that, in my opinion, acceptance of office was a negation of our policy of rejection of the Act; it was further a reversal of the policy we had adopted in 1920 and followed since then. Since Lucknow[1] the Congress has further clarified its position in the election manifesto and declared that we are not going to the Legislatures to co-operate in any way with the Act but to combat it. That limits the field of our decision in regard to offices, and those who incline to acceptance of them must demonstrate that this is the way to non-co-operate with the Act, and to end it.

[1] The Lucknow Session of the Indian National Congress was held in April 1936. [Ed.]

It seems to me that the only logical consequence of the Congress policy, as defined in our resolutions and in the election manifesto, is to have nothing to do with office and Ministry. Any deviation from this would mean a reversal of that policy. It would inevitably mean a kind of partnership with British imperialism in the exploitation of the Indian people, an acquiescence, even though under protest and subject to reservations, in the basic ideas underlying the Act, an association to some extent with British imperialism in the hateful task of the repression of our advanced elements. Office accepted on any other basis is hardly possible, and if it is possible, it will lead almost immediately to deadlock and conflict. That deadlock and impasse does not frighten us ; we welcome it. But then we must think in terms of deadlocks and not in terms of carrying on with the office.

There seems to be a fear that if we do not accept office, others will do so, and they will put obstacles in the way of our freedom movement. But if we are in a majority we can prevent others from misbehaving ; we can even prevent the formation of any Ministry. If our majority is a doubtful one then office for us depends on compromises with non-Congress elements, a policy full of danger for our cause, and one which would inevitably lead to our acting in direct opposition to the Congress mandate of rejection of the Act. Whether we are in a majority or in a minority, the real thing will always be the organized mass backing behind us. A majority without that backing can do little in the Legislatures, even a militant minority with conscious and organized mass support can make the functioning of the Act very difficult.

(4) *Resolution of the Working Committee of the Indian National Congress, 27 February to 1 March 1937*[1]

The work of the Congress members of the Provincial Legislatures shall be governed by the following policy :

(i) The Congress has entered the Legislatures not to co-operate with the new Constitution or the Government but to combat the Act and the policy underlying it, as this Act and policy are intended to tighten the hold of British imperialism on India and to continue the exploitation of the Indian people. The Congress adheres to its general and basic policy of non-co-operation with the apparatus of British imperialism except in so far as circumstances may require a variation.

(ii) The objective of the Congress is *purna swaraj* or complete independence and to that end all its activities are directed. The Congress stands for a genuine democratic state in India where political power has been transferred to the people as a whole and the Government is under their effective control. Such a state can only be created by the Indian people themselves, and the Congress has therefore insisted on a Constituent Assembly, elected by adult franchise, to determine the constitution of the country. The Constituent Assembly can only come into existence when the Indian people have developed sufficient power and sanctions to shape their destiny without external interference.

(iii) The immediate objective of the Congress in the Legislatures is to fight the new Constitution, to resist the introduction and working

[1] *The Indian National Congress, Resolutions, 1936-7* (All-India Congress Committee, Allahabad), pp. 41-4.

of the Federal part of the Act, and to lay stress on the nation's demand for a Constituent Assembly. Congress members of the Legislatures have been directed by the Faizpur Congress to take the earliest opportunity to put forward in the new Assemblies this demand for a Constituent Assembly, and to support it by mass agitation outside.

(iv) Congress members of the Legislatures must remember the Congress policy of not assisting or co-operating with any function or activity, calculated to enhance the power or prestige of British imperialism in India. Ceremonial, official, or social functions of this kind must therefore be avoided and no Congress member should take part in them. In doubtful cases individual members should not take any action themselves but should refer to the Congress Party in the Assembly and should abide by its decision.

(v) No Congress members of the Legislatures may accept a title given by the British Government.

(vi) The Congress Party in each Provincial Assembly must act as a disciplined body, the leaders of which will represent the Party in any conversations with the Government and other groups. Individual members shall have no official contacts with Government other than those resulting from their duties as Members, and such as may be expressly authorized by the Party.

(vii) Members will be expected to be in their places in the Assemblies during the session and when the Party is attending. There should be no absence except for leave taken and cause shown.

(viii) All Congress Members of the Legislatures shall be dressed in khadi.

(ix) Congress Parties in the Provincial Assemblies must not enter into any alliances with other groups in the Assembly without the permission of the Working Committee.

(x) Any Member of the Provincial Legislatures not elected on behalf of the Congress but willing to take the Congress pledge and abide by Congress principles and discipline may be taken into the Congress Party in that Legislature, if the Party consider his admission desirable. But no person against whom disciplinary action has been taken by the Congress may be accepted without the permission of the Working Committee.

(xi) Congress members should press for the carrying out of the Congress programme as enunciated in the election manifesto and the Congress agrarian resolution. In particular they should work for :

1. A substantial reduction in rent and revenue.
2. Assessment of income-tax, on a progressive scale, on agricultural incomes, subject to a prescribed minimum.
3. Fixity of tenure.
4. Relief from the burden of rural debt and arrears of rent and revenue.
5. Repeal of all repressive laws.
6. Release of political prisoners, internees and detenus.
7. Restoration of lands and property confiscated or sold by Government during Civil Disobedience Movements.
8. Eight-hour day for industrial workers, without reduction of pay. Living wage.
9. Prohibition of intoxicating liquor and drugs.

10. Unemployment relief.
11. Reduction of high salaries, allowances, and cost of administration of Government.

(xii) Under the existing Act, with all its safeguards and special powers in the hands of the Viceroy or the Governor, and its protection of the Services, deadlocks are inevitable. They should not be avoided when they occur while pursuing Congress policy.

(xiii) Congress members in the Provincial Assemblies should further give expression to certain important demands of all-India application which may not be given effect to in the Provincial Assemblies, such as, substantial reduction of the military expenditure as well as of the higher Civil Services ; complete national control over trade and tariffs and currency ; repeal of all-India repressive legislation ; freedom of speech, press and association ; opposition to war preparations, credits and loans.

(xiv) Congress members in the Assemblies must always endeavour to mobilize public opinion in their constituencies for the particular demand they are putting forward in the Legislatures. Work in the Legislatures should thus be co-ordinated with activity outside and mass movements built up in support of those demands and of Congress policy in general.

(5) *'The National Demand' Resolution passed by the All-India National Convention of Congress Legislators, 19-20 March 1937*[1]

This Convention reiterates the opinion of the people of India that the Government of India Act of 1935 has been designed to perpetuate the subjection and exploitation of the Indian people and so strengthen the hold of British imperialism on India.

The Convention declares that the Indian people do not recognize the right of any external power or authority to dictate the political and economic structure of India. The Indian people will only accept a constitutional structure framed by them and based on the independence of India as a nation and which allows them full scope for development according to their needs and desires.

The Convention stands for a genuine democratic State in India where political power has been transferred to the people as a whole. Such State can only be created by the Indian people themselves through the medium of a Constituent Assembly elected on the basis of adult suffrage, and having the power to determine finally the Constitution of the country.

The electorate has, in overwhelming measure, set its seal on the Congress objective of independence and the rejection of the new Constitution. The Constitution therefore stands condemned and utterly rejected by the people, through the self-same democratic process which had been invoked by the British Government and the people have further declared that they desire to frame their own Constitution based on national independence through the medium of a Constituent Assembly.

The Convention therefore calls upon all Congress Parliamentary Parties to take the earliest opportunity to put forward in the name of

[1] *The Indian Annual Register* (1937), vol. I, p. 182.

the nation, a demand in their respective Legislatures that the Government of India Act, 1935, be withdrawn so that the people of India may frame their own Constitution.

III. The Indian National Congress and the Formation of Provincial Ministries: Constitutional Impasse over the Question of the Exercise of the Special Powers vested in the Governors

(1) *Resolution of the All-India Congress Committee, 18 March 1937*[1]

The All-India Congress Committee records its high appreciation of the magnificent response of the country to the call of the Congress during the recent elections and the approval by the electorate of the Congress policy and programme. The Congress entered these elections with its objective of independence and its total rejection of the new Constitution, and the demand for a Constituent Assembly to frame India's Constitution. The declared Congress policy was to combat the new Act and end it. The electorate has, in overwhelming measure, set its seal on this policy and programme and the new Act therefore stands condemned and utterly rejected by the people through the self-same democratic process which had been evoked by the British Government, and the people have further declared that they desire to frame their own Constitution, based on a national independence, through the medium of a Constituent Assembly elected by adult franchise. This Committee therefore demands, on behalf of the people of India, that the new Constitution be withdrawn.

In the event of the British Government still persisting with the new Constitution, in defiance of the declared will of the people, the All-India Congress Committee desires to impress upon all Congress members of the Legislatures that their work inside and outside the Legislatures must be based on the fundamental Congress policy of combating the new Constitution and seeking to end it, a policy on the basis of which they sought the suffrage of the electorate and won their overwhelming victory in the elections. That policy must inevitably lead to deadlocks with the British Government and bring out still further the inherent antagonism between British imperialism and Indian nationalism, and expose the autocratic and undemocratic nature of the new Constitution.

The All-India Congress Committee endorses and confirms the resolutions of the Working Committee passed at Wardha on February 27 and 28, 1937[2] on the extra-parliamentary activities of Congress members of Legislatures, mass contacts, and the Congress policy in the Legislatures, and calls upon all Congressmen in the Legislatures and outside to work in accordance with the directions contained in them.

And on the pending question of office acceptance, and in pursuance of the policy summed up in the foregoing paragraphs, the All-India Congress Committee authorizes and permits the acceptance of offices

[1] *The Indian National Congress, Resolutions, 1936-7* (All-India Congress Committee, Allahabad), pp. 10-12.

[2] See pp. 389-91 above. [Ed.]

in Provinces where the Congress commands a majority in the Legislature, provided the Ministerships shall not be accepted unless the leader of the Congress Party in the Legislature is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of Ministers in regard to constitutional activities.

(2) *Press statement by Gandhiji, 30 March 1937*[1]

Having brooded over the refusal of Governors to give assurances asked for by invited Congress leaders in Majority Provinces, I feel I must give my opinion on the situation that has arisen in the country. I have had three cables from London shown to me asking for my opinion. Friends in Madras too have expressed for its publication. Though it is a departure from my self-imposed rule, I can no longer withstand the pressure, especially as I am the sole author of the office-acceptance clause of the Congress resolution and the originator of the idea of attaching a condition to office acceptance. My desire was not to lay down any impossible condition. On the contrary, I wanted to devise a condition that could be easily accepted by Governors. There was no intention whatsoever to lay down a condition whose acceptance would mean any slightest abrogation of the Constitution. Congressmen were well aware that they could not, and would not, ask for any such amendment.

Congress policy was, and is, not to secure an amendment but an absolute ending of the Constitution which nobody likes. Congressmen were and are also aware that they could not end it by mere acceptance of office, even conditional. The object of that section of the Congress which believed in office-acceptance was pending the creation by means consistent with the Congress creed of non-violence, of a situation that would transfer all power to the people, to work in offices so as to strengthen the Congress which has been shown predominantly to represent mass opinion.

I felt that this object could not be secured unless there was a gentlemanly understanding between Governors and their Congress Ministers that they would not exercise their special powers of interference so long as Ministers acted within the Constitution. Not to do so would be to court an almost immediate deadlock after entering upon office. I felt that honesty demanded that understanding. It is common cause that Governors have discretionary powers. Surely here was nothing extra constitutional in their saying that they would not exercise their discretion against Ministers carrying on constitutional activities. It may be remembered that the understanding was not to touch numerous other safeguards over which Governors had no power. A strong party with a decisive backing of the electorate could not be expected to put itself in the precarious position of the interference at will of Governors.

The question may be put in another way. Should Governors be courteous to Ministers or discourteous ? I hold that it would be distinctly discourteous if they interfered with their Ministers in matters over which the law gave the latter full control and with which Governors were under no legal obligation to interfere. A self-respecting Minister, conscious of an absolute majority at his back, could not but demand an assurance of non-interference. Have I not heard Sir Samuel Hoare and other

[1] *The Indian Annual Register* (1937), vol. I, pp. 242-3.

Ministers saying in so many words that ordinarily Governors would not use their admittedly large powers of interference? I claim that the Congress formula asked for nothing more. It has been claimed on behalf of the British Government that the Act gives autonomy to the Provinces. If that is so, it is not Governors but Ministers who are during their period of office responsible for the wise administration of their Provinces. Responsible Ministers sensible of their duty could not submit to interference in pursuance of their daily duty.

It does, therefore, appear to me that once more the British Government has broken to the heart what it has promised to the ear. I doubt not that they can and will impose their will on the people till the latter develop enough strength from within to resist it but that cannot be called working Provincial Autonomy. By flouting the majority obtained through the machinery of their creation, they have in plain language ended autonomy which they claim the Constitution has given to the Provinces.

The rule, therefore, will now be the rule of the sword, not of the pen nor of the indisputable majority.

Any way that is the only interpretation which, with all the goodwill in the world, I can put upon the Government action. For, I believe in the cent per cent honesty of my formula whose acceptance might have prevented a crisis and resulted in the natural, orderly and peaceful transference of power from the bureaucracy to the largest and fullest democracy known to the world.

(3) *Resolution of the Working Committee of the Indian National Congress, 26-9 April 1937*[1]

The Working Committee approves of and endorses the action that the leaders of the Congress Parliamentary Parties in the Provinces took, in pursuance of the resolution of the All-India Congress Committee dated March 18, 1937,[2] on being invited by the Governors in their respective Provinces to help them in the formation of Ministries.

In view of the fact that it is contended by British Ministers that it is not competent for the Governors, without amendment of the Act, to give the assurance required by the Congress for enabling the Congress leaders to form Ministries, the Committee wishes to make it clear that the resolution of the All-India Congress Committee did not contemplate any amendment of the Act for the purpose of the required assurances. The Working Committee moreover is advised by eminent jurists that such assurances can be given strictly within the Constitution.

The Working Committee considers the pronouncements of the policy of the British Government made by Lord Zetland and Mr Butler are utterly inadequate to meet the requirements of the Congress, are misleading and misinterpret the Congress attitude. Further the manner and the setting in which such pronouncements have been made are discourteous to the Congress. The first record of the British Government as well as its present attitude show that without specific assurances as required by the Congress, popular Ministries will be unable to function

[1] *The Indian National Congress, Resolutions, 1936-7* (All-India Congress Committee, Allahabad), p. 54.

[2] See pp. 392-3 above. Ed.]

properly and without irritating interference. The assurances do not contemplate the abrogation of the right of the Governor to dismiss a Ministry or dissolve a Provincial Assembly when serious differences of opinion arise between the Governor and his Ministers. But this Committee has grave objection to Ministers having to submit to interference by Governors with the alternative of themselves having to resign their office instead of the Governors taking the responsibility of dismissing them.

(4) *Broadcast Message by His Excellency the Viceroy, Lord Linlithgow, 22 June 1937*[1]

The executive authority of a Province runs in the name of the Governor : but in the ministerial field the Governor, subject to the qualifications already mentioned, is bound to exercise that executive authority on the advice of his Ministers. There are certain strictly limited and clearly defined areas in which, while here as elsewhere primarily responsibility rests with Ministers, the Governor remains ultimately responsible to Parliament. Over the whole of the remainder of the field Ministers are solely responsible, and they are answerable only to the Provincial Legislature. In the discharge of the Governor's Special Responsibilities it is open to the Governor, and it is indeed incumbent upon him, to act otherwise than on the advice of his Ministers if he considers that the action they propose will prejudice Minorities or areas or other interests affected. The decision in such cases will rest with the Governor ; and he will be responsible to Parliament for taking it. But the scope of such potential interference is strictly defined—and there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a Province outside the limited range of the responsibilities specially confined to him. Before taking a decision against the advice of his Ministers even within the limited range a Governor will spare no pains to make clear to his Ministers the reasons which have weighed with him in thinking both that the decision is one which it is incumbent on him to take, and that it is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction. In such circumstances, given the goodwill which we can I trust postulate on both sides, and for which I can on behalf of His Majesty's Government answer so far as Governors are concerned, conflicts need not in a normal situation be anticipated. On the matter of degree a convention which would require the automatic dismissal or resignation of a Ministry whenever there is any difference of opinion, however unimportant, would show a lack of proportion, and I need not now emphasize the objections to any such convention. For it goes without saying that cases of quite minor importance may arise within the area under discussion ; and it goes without saying equally that Government, and the position of Ministers, would be impossible if on each such occasion a Governor were required by a binding convention to dismiss his Ministers, or the Ministers felt it incumbent on them to resign. The interruption to administration and the loss of credit to

[1] Marquess of Linlithgow, *Speeches and Statements, 1936-43* (Bureau of Public Information, Government of India, New Delhi, 1945), pp. 80-1.

Ministers would be intolerable. All the more so since Ministers would feel compelled to resign on account of a decision for which they were not in any way responsible and on which they would be at liberty to indicate publicly that they differed from the Governor who had, in the discharge of his own responsibilities, chosen to take a particular course. It is not by rigid conventions of this nature, but by give and take, by the elasticity which is the governing factor of any successful democratic constitution, that constitutional advance is shown by the experience of history to proceed.

Where on the other hand a really major issue is involved and Ministers, even though they are not responsible for the final decision taken by a Governor, and can without any constitutional impropriety make that clear, feel that such action has raised issues of such a character, and affected their position as a parliamentary party, in such a way that they can no longer, without misunderstanding in the country, associate themselves with the Governor in the work of administration, then it is open to Ministers to resign. Or, if they do not resign and the Governor feels that his partnership with them cannot with profit to the public continue, it is open to a Governor, and indeed incumbent on him, to dismiss them. But the object of Governors, and, I feel confident, the object of the Ministers, will at all times be to avoid such a state of things arising. The mere fact that the Government of India Act covers contingencies such as the dismissal of Ministers, the breakdown of the Constitution, or the like, is not for one moment to be taken as involving an assumption that the framers of the Act, those concerned with its administration, or anyone, indeed, who is concerned for the constitutional progress and development of this great country, wishes to see those contingencies turned into realities. The design of Parliament, and the object of those of us who are the servants of the Crown in India and to whom it falls to work the provisions of the Act, must be and is to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people for the betterment and improvement of each individual Province, and of India as a whole ; and to avoid, in every way consistent with the special responsibilities for Minorities and the like which the Act imposes, any such clash of opinion as would be calculated unnecessarily to break down the machine of government, or to result in a severance of that fruitful partnership between the Governor and his Ministers which is the basis of the Act, and the ideal, the achievement of which the Secretary of State, the Governor-General, and the Provincial Governors are all equally concerned to secure.

(5) *Resolution of the Working Committee of the Indian National Congress, 5-8 July 1937*[1]

The All-India Congress Committee, at its meeting held in Delhi on March 18, 1937, passed a resolution affirming the basic Congress policy in regard to the new Constitution and laying down the programme to be followed inside and outside the Legislatures by Congress members of such Legislatures. It further directed that in pursuance of that policy, permission should be given for Congressmen to accept office in Provinces

[1] *The Indian National Congress, Resolutions, 1936-7* (All-India Congress Committee, Allahabad), pp. 59-61.

where the Congress commanded a majority in the Legislature, and the leader of the Congress Party was satisfied and could state publicly that the Governor would not use his special powers of interference, or set aside the advice of Ministers in regard to their constitutional activities. In accordance with these directions, the leaders of Congress Parties, who were invited by Governors to form Ministries, asked for the necessary assurances. These not having been given, the leaders expressed their inability to undertake the formation of Ministries. But since the meeting of the Working Committee on 28 April last, Lord Zetland, Lord Stanley and the Viceroy have made declarations on this issue on behalf of the British Government. The Working Committee has carefully considered these declarations and is of opinion that though they exhibit a desire to make an approach to the Congress demand they fall short of the assurances demanded in terms of the All-India Congress Committee resolution as interpreted by the Working Committee resolution of 28 April. Again the Working Committee is unable to subscribe to the doctrine of partnership propounded in some of the aforesaid declarations. The proper description of the existing relationship between the British Government and the people of India is that of the exploiter and the exploited, and hence they have a different outlook upon almost everything of vital importance. The Committee feels, however, that the situation created as the result of the circumstances and events that have since occurred, warrants the belief that it will not be easy for the Governors to use their special powers. The Committee has, moreover, considered the views of Congress members of the Legislatures and of Congressmen generally.

The Committee has therefore come to the conclusion and resolves that Congressmen be permitted to accept office where they may be invited thereto. But it desires to make it clear that office is to be accepted and utilized for the purpose of working in accordance with the lines laid down in the Congress manifesto and to further in every possible way the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other.

IV. Constitutional Crisis arising from Ministerial Resignations in the United Provinces and Bihar

(1) *Letter from Mr Gobind Ballabh Pant, Prime Minister of the United Provinces, to the Governor of the Province, 15 February 1938*[1]

As Your Excellency intimated to me and my colleagues that, in compliance with order issued to you by the Governor-General under Section 126(5)[2] of Government of India Act, you are bound to reject the advice which we thought it our duty to tender to you in regard to the release of political prisoners, we think the only course open to us is

[1] Marquess of Linlithgow, op. cit., pp. 438-40.

[2] Section 126(5) : 'Without prejudice to his powers under the last preceding sub-section, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof.' [Ed.]

to tender our resignations, which we hereby do. The issue now raised is of the widest importance both from the constitutional and the administrative points of view. The release of political prisoners has formed a prominent part of Congress programme throughout. It was distinctly mentioned in Congress election manifesto and the electorate in overwhelming numbers has supported the demand of Congress. It was again urged in resolution passed by the Convention in Delhi in March last year. The British Government must therefore have been fully aware of Congress policy and its implication in regard to this matter. It is unthinkable that Governor-General should not have realized that Congress, whenever it accepted office, would take the earliest opportunity to implement Congress programme and to honour its pledges. The Congress was invited to accept office with full knowledge of these facts. An assurance was also definitely held out that Congress in office would be free to carry out its programme. It is exceedingly strange that when, after prolonged and patient consideration and discussion, we proceed to give effect to Congress policy, the Governor-General issues his orders under Section 126 to thwart the Congress Ministry in this Province in this matter. The reasons which have weighed with the Governor-General in taking this decision are not known to us, and in spite of our request to Your Excellency you expressed your inability to disclose them to us. The responsibility for maintaining law and order in the Province is that of Ministers. No Council of Ministers can discharge its functions satisfactorily if its considered opinion is disregarded arbitrarily in respect of momentous questions, strictly falling within their purview, by outside authority, and when even the courtesy of mentioning the grounds on which such interference is sought is not shown to it. It is inconceivable that release of no more than 15 political prisoners, some of whom were merely boys when they were convicted, and several of whom have undergone long terms of imprisonment and are due to be released within a few months in the usual course, can be a grave menace to peace and tranquillity of any Province in India. We have every reason to believe and are definitely assured that they have abjured the path of violence. The jail authorities have a similar impression after a close observation of individual prisoners in their charge. We have discussed this question on numerous occasions with Your Excellency and we are inclined to believe that you have come at least to appreciate our point of view. The decision of the Governor-General is attributed to extra-provincial affairs and it is significant that action has been taken under Section 126 and not under Section 54, which suggests that Governor of the Province does not consider that there is any menace to peace and tranquillity inside the Province itself. There is an insistent demand in the country for the release of these prisoners and it has been forcefully voiced in our own Assembly by all sections from time to time. Their non-release is apt to disturb peaceful atmosphere, to engender tension and to hamper growth of non-violence spirit. The Government of Burma has recently released all the rebellion prisoners. A general release of all political prisoners followed in 1921, immediately after the introduction of Dyarchy in the Province. We have had occasion to discuss this question in all its aspects with you during the last seven months. While there have been hunger strikes in every other Province, the prisoners here have refrained from

doing so and have reposed their trust in us. We had far-reaching and comprehensive programme for agrarian reforms, rural developments, jail reforms, overhaul of local self-governing bodies, education, prohibition and excise reforms, and several other large issues which called for a tranquil atmosphere for their solution. This interference on the part of the Governor-General in the ordinary administration of the Province raises a constitutional issue of gravest import and, instead of promoting peace and tranquillity, is likely to imperil it, not only in this Province but elsewhere in India also. In our considered judgement their release is essential in public interest, and Governor-General has, by his orders, disabled us from performing our elementary duty in this respect. We look upon this interference as an utter abuse, even of provisions of Section 126(5), and it brings vividly home to us the unsubstantial character of Autonomy which Provinces are supposed to enjoy, when advice of Council of Ministers can be trampled upon by one entirely outside the Province, and having no direct contact with it, and not a live part in its affairs. In the circumstances there is no alternative to the course which we have taken and we would request you to accept this resignation.[1]

(2) *Resolution of the Indian National Congress, 19-21 February 1938*[2]

In accordance with the direction of the Faizpur Congress, the All-India Congress Committee decided in March 1937, the issue of acceptance of office in Provinces and permitted Congressmen to form Ministries, provided certain assurances were given by or on behalf of the British Government. These assurances not being forthcoming, the Leaders of Congress Parties in the Provincial Assemblies declined at first to form Ministries. Thereafter there was a considerable argument for some months regarding these assurances and various declarations were made by the Secretary of State for India, the Viceroy and the Governors of the Provinces. In these declarations it was definitely stated, among other things, that there would be no interference with the day-to-day administration of provincial affairs by responsible Ministers.

The experience of office by Congress Ministers in the Provinces has shown that at least in two Provinces, the United Provinces and Bihar, there has in fact been interference in the day-to-day administration of provincial affairs as shown hereafter. The Governors, when they invited Congress members to form Ministries, knew that the Congress Manifesto had mentioned the release of political prisoners as one of the major items of the Congress policy. In pursuance thereof the Ministers began the release of political prisoners and they soon experienced delay, which was sometimes vexatious, before the Governors would endorse the orders of release. The way releases have been repeatedly delayed is evidence of the exemplary patience of Ministers. In the opinion of the Congress, release of prisoners is a matter coming essentially within the purview of day-to-day administration, which does not admit of protracted discussion with Governors. The function of the Governor is to guide and

[1] The Prime Minister of Bihar also submitted his resignation on the same issue. [Ed.]

[2] *The Indian National Congress, Resolutions, 1938-9* (All-India Congress Committee, Allahabad), pp. 12-16.

advise Ministers, and not to interfere with the free exercise of their judgement in the discharge of their day-to-day duty. It was only when the time came for the Working Committee to give an annual account to the Congress delegates and to the masses of people backing them, that the Committee had to instruct Ministers, who were themselves sure of their ground, to order release of the political prisoners in their charge and to resign if their orders were countermanded. The Congress approves of and endorses the action taken by the Ministers of the United Provinces and Bihar and congratulates them on it.

In the opinion of the Congress, the interference of the Governor-General with the deliberate action of the respective Prime Ministers is not merely a violation of the assurance above referred to, but it is also a misapplication of Section 126(5) of the Government of India Act. There was no question of grave menace to peace and tranquillity involved. The Prime Ministers had besides in both cases satisfied themselves from assurances from the prisoners concerned and otherwise of their change of mentality and acceptance of the Congress policy of non-violence. Indeed, it is the Governor-General's interference which has undoubtedly created a situation that may easily, in spite of the Congress effort to the contrary, become such a grave menace.

The Congress has, during the short period that Congressmen have held office, given sufficient evidence of their self-sacrifice, administrative capacity in the matter of enacting legislation for the amelioration of economic and social evils. The Congress gladly admits that a measure of co-operation was extended by the Governors to the Ministers. It has been the sincere effort on the part of the Congress to extract what is possible from the Act for the public good and to strengthen the people in the pursuit of their goal of complete independence and the ending of imperialistic exploitation of the masses of India.

The Congress does not desire to precipitate a crisis which may involve non-violent non-cooperation and direct action consistent with the Congress policy of truth and non-violence. The Congress is therefore at present reluctant to instruct Ministers in other Provinces to send in their resignations by way of protest against the Governor-General's action, and invites His Excellency the Governor-General to reconsider his decision so that the Governors may act constitutionally and accept the advice of their Ministers in the matter of the release of the political prisoners.

(3) *Statement by His Excellency the Viceroy, Lord Linlithgow, 22 February 1938*[1]

The history of the difficulties which have arisen in the United Provinces and Bihar in connexion with the release of prisoners described as political prisoners is well known. In both Provinces discussions regarding the release of prisoners in this class have, for some time past, been proceeding between Ministers and Governors; and Governors throughout made it clear that they were ready and willing to examine individual cases and would not stand in the way of release, unless where circumstances were clearly such as to involve responsibilities laid upon them by the Act. The principle of individual examination was well

[1] Marquess of Linlithgow, op. cit., pp. 140-2.

established over many months in Provinces where Congress is in power. It was equally established in other Provinces, and Mr Gandhi himself has proceeded on this basis in his recent discussion with the Government of Bengal. It was thus no new thing.

Discussions regarding release after examination of individual cases were still proceeding, when on 14th February a demand was tendered by the Premiers of Bihar and the United Provinces for immediate general release of all prisoners classed as 'political' in those two Provinces. In the case of Bihar that demand, received by the Governor at 1 P.M., called for action by the Chief Secretary in this case by 4 P.M. the same day. In the case of the United Provinces the time limit set for compliance was, also, brief to a degree. In the case of Bihar the Premier made it clear that as a matter of principle he could not agree to individual examination. In the case of the United Provinces, after much discussion Ministers made it clear that a policy of gradual and individual release would not satisfy them.

The prisoners in question are almost without exception persons convicted of violence or of preparation for specific acts of violence, by normal criminal courts. . . Their record is such that individual examination was called for, not merely for the reason I have given but in the interest of public safety, and that examination was equally essential in the interest of maintenance of sanctions of law, and of authority and position of courts.

In these circumstances, having regard to the responsibilities which, under the Constitution, are placed upon the Governor-General, the Governors of both Provinces, after consulting their Ministers, referred for my instructions the advice which their Ministers had tendered. Having regard to the circumstances described above ; to the essential necessity of considering the reaction on adjoining Provinces of the release of these prisoners ; and to the fact that acceptance of the principle that terrorist convicts should be indiscriminately released without regard to individual considerations would be highly dangerous, and in view of the history of terrorism in the past could not fail to give impetus to fresh terrorist organization in Bengal, careful consideration left me with no choice but to conclude that issues involved were such that it was incumbent on me to issue an instruction to those Governors under provisions of Section 126(5) of the Act. That section empowers the Governor-General to issue orders to Governors of Provinces as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or of any part thereof. To acquiesce in the immediate and indiscriminate release of prisoners with records of violent crime would have been to strike a blow at the root of law and order in India ; dangerously to threaten peace and good government, and to run a grave risk to peace and tranquillity ; all the more so since this categorical demand took no account of possible reactions of certain releases on the position elsewhere, or of the reiterated readiness of Governors to examine individual cases.

The Governors, on receipt of my instructions, informed their Ministers that they could not accept their advice on this matter. The Ministers therefore tendered their resignation.

The Governors concerned, and I, so far as I am concerned, have

done our utmost over the last seven months to work in harmonious co-operation with the Congress Ministers of both these Provinces and all possible help has been lent them. There has been no foundation over that period for any suggestion that it is the policy, or desire, of the Governor-General or of the Governors to impede or interfere with legitimate activities of these Ministries, or to take any step the necessity for which was not imposed upon them by the terms of the Act. That is equally true today.

I have made it clear that in issuing the instructions I did, I had no hesitation in feeling that a grave menace to the basis of law and order, and so to the peace and tranquillity of India, would have been involved in acceptance by the Governors of demands of such an order presented to them in such a manner.

As regards the particular issue of the release of prisoners, so far as the Governors are concerned there is no going back on the policy of readiness to examine individual cases, and the Governors remain ready to agree to release after examination, where no undue risk in their own Province, or in other Provinces, is involved. There is no impropriety, whatever may be suggested to the contrary, in their requiring such individual examination, or in their declining without it to accept the advice of their Ministers. Ministers are responsible for law and order. But they are so responsible under the Act subject to the responsibility of Governors to ensure the peace and tranquillity of their own Province ; and the Governors are bound to have in mind the corresponding responsibility that falls on the Governor-General for the peace and tranquillity of India or any part thereof. Neither a Governor nor the Governor-General will wish to see his responsibility attracted, but, as I made clear in my message of last June, where that responsibility is in fact attracted, neither the Governor nor the Governor-General can shrink from discharging it.

Finally, and this I wish particularly to emphasize, there is no foundation for the suggestion that the action I have taken is dictated by a desire to undermine the position of Congress Ministries. The record of the last seven months should have made it abundantly clear that the Governors and I myself are only too anxious to lend all assistance that we properly can within the framework of the Act to any Ministry in power in a Province. Neither the Governors nor the Governor-General have any desire to interfere, or any intention of interfering with the legitimate policy of a Congress or any other Government. The action taken was designed to safeguard the peace and tranquillity of India and, incidentally, to uphold the sanctions of law and orderly functioning of the constitutional machine. That action leaves it open to Ministers, in consultation with the Governors, to pursue a policy of release of prisoners, and they need anticipate no difficulty now, any more than in the past, in securing the friendly and ready co-operation of the Governors in individual examination. I am glad to think that in no quarter is there manifest any disposition to extend the area of difficulty beyond the limits of the position which I have described, and it is my sincere and earnest hope that it may shortly be possible to return to normality and that in the two Provinces most concerned Ministers in discussion with the Governors may find themselves able to resume their interrupted labours.

(4) *Statement by Gandhiji, 23 February 1938*[1]

No one has questioned the propriety of examining the cases of prisoners to be discharged but what I have questioned and the Congress most emphatically questions is the propriety of such examination by the Provincial Governors in Provinces said to be enjoying complete Provincial Autonomy. The duty and right of examination belong solely to the responsible Ministers as I understand the Government of India Act and the convention in the responsibly governed Colonies.

The Governors' duty and right are to advise their Ministers on questions of broad policy and warn them of the danger in their exercise of certain powers but, having done so, to leave their Ministers free to exercise their unfettered judgement. If such were not the case responsibility would become a perfectly meaningless term and the Ministers responsible to their electors would have as their share nothing but odium and disgrace if their responsibility had to be shared with the Governors in the daily administration of affairs by law entrusted to them.

It is hardly graceful for His Excellency to quote against the poor Ministers their non-exercise of their undoubted powers to prevent the Governors from examining individual cases. The Congress resolution describes their forbearance as exemplary patience. I would venture to add that probably it was also the inexperience of the Ministers who were totally new to their task.

I am afraid, therefore, that unless this crucial question is decided in favour of the Ministers it will be difficult for them to shoulder the grave responsibility that the Congress has permitted them to take over.

I am glad His Excellency has drawn public attention to the method I adopted in Bengal. He might have noted also the difference between Bengal on the one hand and the U.P. and Bihar on the other. In Bengal I was dealing with a Government which was not bound by the Congress manifesto in any shape or form. The Ministers there, rightly or wrongly, would not listen to wholesale discharge of convicted prisoners. I was treading upon very delicate ground in pursuance of my promise to the prisoners. My motive was purely humanitarian and the only weapon that I had at my disposal was an appeal to the humanity of the Bengal Ministers and I am glad to be able to testify that I was not speaking to hearts of stone.

The situation in the U.P. and Bihar is totally different. The Ministers there are bound by the manifesto which gave them victory at the polls. They had not only examined the cases of all prisoners whose release they were seeking but, being fully aware of their responsibility for the due preservation of peace in their Provinces, they had personally secured assurances from the prisoners in question that the latter no longer believed in the cult of violence.

One thing in His Excellency's statement gives me the hope that the impending crisis might be prevented. He has still left the door open for negotiations between the Governors and the Ministers.

I recognize that the notices were sudden because in the nature of things they had to be so. All parties have now had ample time for considering the situation. In my opinion, the crisis can be avoided if

[1] *The Indian Annual Register* (1938), vol. I, p. 310.

the Governors are left free to give an assurance that their examination of the cases was not intended to be a usurpation of the power of the Ministers and that since the latter had armed themselves with assurances from the prisoners they were free to release them on their own responsibility and I hope that the Working Committee will leave the Ministers free, if they are summoned by the Governors, to judge for themselves whether they are satisfied by the assurances they may receive.[1]

V. Dr Shyama Prasad Mookerjee, Minister for Finance, Government of Bengal, on undue Interference of the Governor in the Work of the Ministry, 16 November 1942[2]

Broadly speaking, my reasons for resignation are two-fold. First, as I intimated to you at the earliest opportunity on August 9 last, I disapprove of the policy adopted by the British Government and the Government of India with regard to the present political situation in the country. I am aware that you, as a Provincial Governor, have hardly any responsibility for the formulation of this policy. But my second reason mainly concerns you. And that is connected with the manner, in my opinion unwarranted, in which you have interfered with the work of the Ministry and have rendered so-called Provincial Autonomy into a meaningless farce. Although you could not be held responsible for any all-India decisions, you might have risen to the full height of statesmanship and by pursuing a bold and straightforward policy of trust and co-operation, changed the tone of the administration in Bengal, leading to a wholesome relaxation of the political situation and ensuring the safety of a Province which is now one of the north-eastern war frontiers in India.

Let me refer briefly to the general political situation in the country. My letter to the Viceroy fully explains my view-point. But I should record here the extraordinary manner in which you acted when you received information of the policy as determined by the Government of India regarding the threatened Congress movement. When the letter from the Government of India came to the Chief Secretary, you showed it to and discussed it with the Chief Minister who rightly suggested that the policy enunciated by the Government of India on so important a subject should be fully discussed by Cabinet. You deliberately rejected this advice and even asked the Chief Minister to keep back the contents of the letter from his colleagues, although some permanent officials saw it and recorded their plans for giving effect to the directions. You decided that the Cabinet would consider the letter only after information had been received from the Government of India that effect had actually been

[1] After mutual discussion with the respective Governors an understanding was reached by the Prime Ministers and the resignations were withdrawn. [Ed.]

[2] *India Unreconciled* (*The Hindustan Times*, New Delhi, 1944), pp. 100-7.

Dr S. P. Mookerjee resigned his office on 16 November 1942 as a protest against the Central Government's policy with regard to the political situation in the country, and what he regarded as the Bengal Governor's constant encroachments in the field of the Ministers. The above extracts are taken from his letter to the Governor of Bengal explaining why he had submitted his letter of resignation to him through the Chief Minister. [Ed.]

given to the policy formulated by it, following the arrest of the Congress leaders. Consultation at this stage was utterly useless as it gave no opportunity to Cabinet to record its views and communicate them for the effective consideration of the Government of India.

When on August 9, after the arrest of the Congress leaders at Bombay, you called us together and asked us either to accept the policy or to resign, I pointed out to you that your action was extraordinary and brought Provincial Autonomy to a state of ridicule. You expected Ministers to stand by you on the basis of collective responsibility but declined to trust them and consult them on such a vital matter except at the very last moment when consultation was indeed fruitless.

* * *

I regret to say that from the very beginning of our association with you, you have failed to rise to that impartial height of a Provincial Governor which could have given you courage and foresight to respect the Constitution, establish new conventions and broaden the base of the provincial administration so as to win the affection and confidence of the people. You have all along permitted yourself to be guided by a section of permanent officials—loyal die-hards, according to you ; short-sighted and reactionary, according to us—resulting in the establishment of a Government within a Government which has proved disastrous to the interests of the province.

I shall not go into details. But let me remind you that you showed no sympathy whenever proposals for the recognition of the people's rights in various fields of activity were made. They were turned down by you because of deep-rooted distrust and suspicion. Our proposal for raising a Bengal Army was not acceptable to you for reasons which would not even bear scrutiny. This alone would have revolutionized public opinion in Bengal. The scheme for popularizing the Home Guard was rejected by you in spite of unanimous advice of all the Ministers, simply because you and your officials were afraid of trusting the people. You have systematically resisted the appointment of Parliamentary Secretaries and the expansion of Cabinet, just to embarrass the Ministry. Even before the Congress started any movement, you declined to give back to thousands of Bengalees their freedom which had been denied to them on suspicion or for participation in political movements, although we were prepared to take full responsibility for their future behaviour and activities consistent with the war situation. Recommendations for individual releases or even for temporary relaxation were turned down by you, utterly oblivious of any assurance given by us. In matters relating to the Denial Policy you failed to realize the untold suffering into which thousands of people would be thrown and the discontent that was bound to follow ; and only after a good deal of effort could that policy be only slightly modified. We do not yet know what plans have been kept ready for destruction of plants, machinery and other properties in case of enemy invasion. Even in matters relating to supply of food and control of supplies you have interfered with Ministerial action and have rendered our task extremely embarrassing. You have discouraged the growth of collective responsibility among Ministers while taking

momentous decisions on vital issues. Ministerial advice has been brushed aside in regard to selection and posting of officers, while your unabashed softness for the present Opposition Party is in marked contrast to the treatment we used to receive in a similar capacity when the last Ministry was in office. Even with regard to a simple question like prorogation of the last session of the Assembly, you have declined to accept our advice. Indeed I did not even receive a reply from you to my letter written early in October, pointing out how the Province had to incur wasteful and avoidable expenditure due to your decision not to prorogue the Assembly, simply to harass the Ministry. In matters affecting the rights and liberties of the people you have constituted yourself into an appellate authority and you claim to act in exercise of your special powers under the Government of India Act. I have repeatedly told you that this is an absurd situation. During the war you can function with success only if you regard yourself as primarily responsible to the people of this Province and act on the advice of their chosen representatives. But you have regarded yourself as one who is beyond anybody's control, enjoying powers without being required to give account to any other authority. You have expressed your annoyance from time to time, that Ministers are not more active in rousing public opinion in respect of matters relating to war or the general political situation. You will not allow Ministers to function and administer according to their own light and judgement. You and some of your officers will commit Government to policies and acts which Ministers do not approve of and afterwards you expect them to stand up as obedient persons fully justifying the results of your mistaken policy. The brunt of the attack falls on Ministers. The Legislature is even precluded from criticizing or commenting on your conduct. You in your turn do not hesitate to take advantage of, and sometimes even go beyond the spirit of, the provisions of the Government of India Act and the Instrument of Instructions, thus reducing ministerial administration to a mockery.

* * *

The manner in which collective fines have been imposed by Government throughout the Province deserves severe condemnation. The scheme of imposition of collective fines on Hindus alone, irrespective of their guilt, has been an all-India feature and is a British revival of the ancient policy of *jizia* for which Aurangzeb made himself famous. In Bengal the Chief Minister had been averse to the imposition of such fines and tried again and again to lay down certain principles which were unimpeachable from the point of view of elementary justice. You have interfered with the Chief Minister's decision and have prevented him from giving effect to these directions. Amounts have been imposed in many cases without any regard to the total damage caused or to the part played by the inhabitants concerned. . . Fines have been imposed in many cases without the Chief Minister knowing what was being done. Only recently it was suggested by the Chief Minister that the realization might be delayed by a fortnight and the entire policy considered at a Cabinet meeting. Your answer to this request, which was made on behalf of us all, was in full conformity with the traditions which you had

already established. You had no objection to a Cabinet meeting being held. But you indicated beforehand with sufficient clearness, but with unbecoming impropriety and discourtesy to Ministers, that you would in any case pass orders in exercise of your individual judgement for the immediate collection of the fines.

VI. Muslim League Opposition to Congress Administration

(1) The New Times, *Lahore, on the Communal Question, 1 March 1938*[1]

In its last session at Haripura, the Indian National Congress passed a resolution for assuring Minorities of their religious and cultural rights.[2] The resolution was moved by Pandit Jawaharlal Nehru and was carried. The speech which Pandit Jawaharlal Nehru made on this occasion was as bad as any speech could be. If the resolution has to be judged in the light of that speech, then it comes to this that the resolution has been passed not in any spirit of seriousness, but merely as a meaningless assurance to satisfy the foolish Minorities who are clamouring 'for the satisfaction of the communal problem'. Mr Jawaharlal Nehru proceeded on the basis that there was really no communal question. We should like to reproduce the trenchant manner in which he put forward the proposition. He said: 'I have examined the *so-called communal question* through the telescope and, if there is nothing, what can you see?' It appears to us that it is the height of dishonesty to move a resolution with these premises. If there is no Minority question, why proceed to pass a resolution? Why not state that there is no Minority question. This is not the first time that Pandit Jawaharlal Nehru has expressed his complete inability to understand or see the communal question. When replying to a statement of Mr Jinnah, he reiterated his conviction that in spite of his best endeavour to understand what Mr Jinnah wanted, he could not get at what he wanted. He seems to think that with the Communal Award which the Congress had opposed, the seats in the Legislature have become assured and now nothing remains to be done. He repeats the offensive statement that the Communal Award is merely a problem created by the middle or upper classes for the sake of a few seats in the Legislature or appointments in Government service or for Ministerial positions. We should like to tell Pandit Jawaharlal Nehru that he has completely misunderstood the position of the Muslim minority

[1] Repeated attempts were made by Pandit Jawaharlal Nehru to secure a clear statement of the grievances which the Muslim League had against the policy pursued by the Congress. Mr M. A. Jinnah, President of the Muslim League, in his letter dated 17 March 1938, referred to this article appearing in *The New Times* as indicative of the Muslim League point of view.—*Nehru-Jinnah Correspondence* (All-India Congress Committee, Allahabad), pp. 55-9.

[2] The Haripura Session of the Congress was held from 19-21 February 1938. Reiterating the resolutions of the Congress Working Committee in October 1937, which in turn reiterated the undertakings given earlier, the Congress declared afresh as follows: '. . . it regards it as its primary duty and fundamental policy to protect the religious, linguistic, cultural and other rights of the Minorities in India so as to ensure for them in any scheme of Government to which the Congress is a party, the widest scope for their development and their participation in the fullest measure in the political, economic and cultural life of the nation.'—*The Indian Annual Register* (1938), vol. I, p. 299. [Ed.]

and it is a matter of intense pain that the President of an all-India organization which claims to represent the entire population of India, should be so completely ignorant of the demands of the Muslim minority. We shall set forth below some of the demands so that Pandit Jawaharlal Nehru may not have any occasion hereafter to say that he does not know what more the Muslims want. The Muslim demands are : (1) That the Congress shall henceforth withdraw all opposition to the Communal Award and should cease to prate about it as if it were a negation of nationalism. It may be a negation of nationalism but if the Congress has announced in its statement that it is not opposing the Communal Award, the Muslims want that the Congress should at least stop all agitation for the recession of the Communal Award. (2) The Communal Award merely settles the question of the representation of the Muslims and of other Minorities in the Legislatures of the country. The further question of the representation of the Minorities in the Services of the country remains. Muslims demand that they are as much entitled to be represented in the Services of their motherland as the Hindus and since the Muslims have come to realize by bitter experience that it is impossible for any protection to be extended to Muslim rights in the matter of their representation in the Services, it is necessary that the share of the Muslims in the Services should be definitely fixed in the Constitution and by statutory enactment so that it may not be open to any Hindu head of any department to ride rough shod over Muslim claims in the name of 'Efficiency'. Pandit Jawaharlal Nehru knows that in the name of efficiency and merit, the rights of Indians to man the Services of their country was denied by the bureaucracy. Today when Congress is in power in seven Provinces, the Muslims have a right to demand of Congress leaders that they shall unequivocally express themselves in this regard. (3) Muslims demand that the protection of their personal law and their culture shall be guaranteed by the statute. And as an acid test of the sincerity of Pandit Jawaharlal Nehru and the Congress in this regard, Muslims demand that the Congress should take in hand the agitation in connexion with the Shahidganj mosque and should use its moral pressure to ensure that the Shahidganj mosque is restored to its original position and that the Sikhs desist from profane uses and thereby injuring the religious susceptibilities of the Muslims. (4) Muslims demand that their right to call *Azan*[1] and perform their religious ceremonies shall not be fettered in any way. We should like to tell Pandit Jawaharlal Nehru that in a village, in the Kasur Tehsil, of the Lahore District, known as Raja Jang, the Muslim inhabitants of that place are not allowed by the Sikhs to call out their *Azans* loudly. With such neighbours, it is necessary to have a statutory guarantee that the religious rights of the Muslims shall not be in any way interfered with and, on the advent of Congress rule, to demand of the Congress that it shall use its powerful organization for the prevention of such an event. In this connexion we should like to tell Pandit Jawaharlal Nehru that the Muslims claim cow slaughter as one of their religious rights and demand that so long as the Sikhs are permitted to carry on *Jhatka* and to live on *Jhatka*, the Muslims have every right to insist on their undoubted right to slaughter cows. Pandit

[1] *Azan* is the Muslim call to prayer, usually uttered by the Muezzin, five times a day from the minaret of a mosque. [Ed.]

Jawaharlal Nehru is not a very great believer in religious injunctions. He claims to be living on the economic plane and we should like Pandit Jawaharlal Nehru to know that for a Muslim the question of cow slaughter is a measure of economic necessity and that therefore it is not open to any Hindu to statutorily prohibit the slaughter of cows.

(5) Muslims demand that their majorities in the Provinces in which they are at present in a majority shall not be affected by any territorial redistributions or adjustments. The Muslims are at present in majority in the Provinces of Bengal, Punjab, Sind, North-Western Frontier Province and Baluchistan. Let the Congress hold out the guarantee and express its readiness to the incorporation of this guarantee in the statute that the present distribution of the Muslim population in the various Provinces shall not be interfered with through the medium of any territorial distribution or readjustment.

(6) The question of national anthem is another matter. Pandit Jawaharlal Nehru cannot be unaware that Muslims all over have refused to accept the *Bande Mataram* or any expurgated addition of that anti-Muslim song as a binding national anthem. If Pandit Jawaharlal Nehru cannot succeed in inducing the Hindu majority to drop the use of this song, then let him not talk so tall, and let him realize that the great Hindu mass does not take him seriously except as a strong force to injure the cause of Muslim solidarity.

(7) The question of language and script is another demand of the Muslims. The Muslims insist on Urdu being practically their national language ; they want statutory guarantees that the use of the Urdu tongue shall not in any way or manner be curtailed or damaged.

(8) The question of the representation of the Muslims in the local bodies is another unsolved question. Muslims demand that the principle underlying the Communal Award, namely, separate electorates and representation according to population strength should apply uniformly in all the various local and other elected bodies from top to bottom.

We can go on multiplying this list but for the present we should like to know the reply of the Congress and Pandit Jawaharlal Nehru to the demands that we have set forth above. We should like Pandit Jawaharlal Nehru fully to understand that the Muslims are more anxious than the Hindus to see complete independence in the real sense of that term established in India. They do not believe in any Muslim *Raj* for India and will fight a Hindu *Raj* tooth and nail. They stand for the complete freedom of the country and of all classes inhabiting this country but they shall oppose the establishment of any majority *Raj* of a kind that will make a clean sweep of the cultural, religious and political guarantees of the various Minorities as set forth above. Pandit Jawaharlal Nehru is under the comforting impression that the questions set forth above are trivial questions but he should reconsider his position in the light of the emphasis and importance which the Minorities which are affected by the programme of the Congress place on these matters. After all it is the Minorities which are to judge and not the Majorities. It appears to us that with the attitude of mind which Pandit Jawaharlal Nehru betrayed in his speech and which the seconder of that resolution equally exhibited in his speech, namely, that the question of Minorities and Majorities was an artificial one and created to suit vested interests, it is obvious that

nothing can come out of the talks that Pandit Jawaharlal Nehru recently initiated between himself and Mr Jinnah. If the Congress is in the belief that this reiteration of its inane pledge to the Minorities will satisfy them and that they will be taken in by mere words, the Congress is badly mistaken.

(2) *The Report of the Inquiry Committee appointed by the Council of the All-India Muslim League to inquire into Muslim Grievances in Congress Provinces, 15 November 1938*[1]

The Communal Problem

The communal problem in India has long defied settlement. It has been approached by the responsible leaders of various communities and political parties from different angles, but each attempt to arrive at a final and satisfactory settlement has generally resulted in increased bitterness, because, during the pendency of negotiations, it is usually the first and foremost endeavour of each party to put the other in the wrong and to throw upon it the whole blame for the failure of the peace parleys. The problem is so baffling that there is a tendency on the part of some of the leaders to adopt the ostrich-like policy of ignoring the problem altogether, or at least of deferring its solution till such time as India is ' free '. In our humble opinion, however, the problem is a real one and the sooner it is solved the better will it be for the country. To postpone its decision is simply to create a vicious circle : the communal problem can only be solved when India is free : India can only be free when the communal problem is solved. Such a circle can lead us nowhere and will only make the country a prey to any foreign exploiter.

Recently the Minorities have been asked to think in terms of international politics and appeals have been made to present a united front to protect India against the perils involved in the international situation. It has been deemed sufficient to assure the Minorities in repeated resolutions, which have now assumed a monotonous formality, that their ' language, culture and religion ' will be protected and the Minorities are expected to accept these assurances without any further safeguards. In our opinion this is a wholly incorrect approach of the problem. The communal problem remains unsettled not because of the communalism of the Minorities, but because of the communalism of the Majorities. In each Province it is for the majority community to win the confidence of the minority, and this can only be done by deeds and not by words.

No one who is familiar with Indian affairs would deny the fact that

[1] The Council of the All-India Muslim League passed the following resolution at its meeting held on 20 March 1938 at Delhi : ' Whereas numerous complaints have reached the Central Office of the hardship, ill-treatment and injustice that is meted out to the Muslims in various Congress Government Provinces and particularly to those who are workers and members of the Muslim League, the Council resolves that a special committee be appointed consisting of the following members to collect all informations, make all necessary inquiries, and take such steps as may be considered proper and to submit their report to the President and the Council from time to time :

Raja Syed Mohammad Mehdi (*Chairman*), Mr A. B. Habibullah (*Secretary*), Khan Bahadur Haji Rashid Ahmad, Syed Ashraf Ahmad, Molvi Abdul Ghani, M.L.A., Mian Ghias-ud-din, M.L.A., Syed Zakir Ali, Syed Hasan Riaz, Syed Taqi Hadi Naqvi.'

The report was submitted on 15 November 1938. [Ed.]

the Congress has failed to inspire confidence in the Minorities and has failed to carry them with it in spite of its oft-repeated resolution guaranteeing religious and cultural liberty to the various communities because its actions are not in conformity with its words.[1] Consequently, though it has succeeded in bringing to its fold a few Muslims, Sikhs and Christians, the Congress continues to be a predominantly Hindu organization and the majority of its members, in spite of their pretensions to nationalism, are still imbued with narrow communalism.

Intoxicated with power after their success in the last general election, the leaders of the Congress initiated a closed-door policy by declaring that they were opposed to the formation of coalitions or alliances with any other party in the Legislatures. The fact that separation and exclusiveness is not conducive to the evolution of a common national life was conveniently lost sight of in the hour of triumph.

We in India have been brought up in the traditions of the British parliamentary democracy and the Constitution foisted on us is also modelled, more or less, on the British pattern. There is, however, an essential difference between the body politic of this country and that of Britain. The majority and minority parties in Britain are interchangeable : their complexion and strength go on changing with the conditions of the country. Today a National Government is in power, but the Conservative, Liberal and Labour parties have an equal chance of running the Government of the country. Here, in India, we have a permanent Hindu majority and the other communities are condemned to the position of perpetual minority. Thus it is easy for the Majority to assume a non-communal label and do things communal under the cloak of nationalism.

Any attempt to apply the Western principles of nationalism without paying due regard to the peculiar conditions of the country is bound to confuse the issue. For the evolution of healthy nationalism, and advancement of the country on the path of freedom, it is absolutely necessary that this problem, at once so important and so full of difficulties, should be dispassionately examined and clearly stated.

The Indian National Congress's conception of nationalism is based on the establishment of a national state of the majority community in which other nationalities and communities have only secondary rights. The Muslims think that no tyranny can be as great as the tyranny of the Majority and they believe that only that state can be stable which gives equal rights and equal opportunities to all communities no matter how small. They attach great importance to this principle, which alone can safeguard the rights of the Muslims and other Minorities. The Muslims have made it clear more than once that besides the question of religion, culture, language and personal laws, there is another question equally important for their future. They must secure definitely their political rights and their due share in the national life, government and administration of the country.[2]

[1] The long list of specific grievances such as the singing of *Bande Mataram* drawn up by the Committee is not extracted here. The extracts from *The New Times* (pp. 407-10 above) and Pandit Jawaharlal Nehru's letter to Mr Jinnah, dated 6 April 1938 (pp. 423-9 below), however, indicate the nature of the alleged grievances.—*Nehru-Jinnah Correspondence* (All-India Congress Committee, Allahabad), pp. 47-51 and 78-89. [Ed.]

[2] Pp. 1-3 of the Report. [Ed.]

Economic Aspect of the Communal Problem

What may appear to a foreigner a purely economic question can be the source of real friction between communities. Religious passions of the ignorant masses can be excited on a question that on the face of it appears quite harmless.

In countries where professions are freely chosen and the commercial community consists of people joined together by common interests this possibility does not exist. But conditions in India are quite different. In other countries a taxation measure adopted by the Legislature would equally affect all communities which constitute a certain trade or profession and its consequences can be termed national. But in India the majority of people affected by a similar measure will belong to a particular community, caste or religion. Thus even an economic measure, which is national elsewhere, assumes a communal complexion in this country. It is easy for Governments and Local Bodies to justify such discriminatory legislation by Western standards, to term it national and economic and to dismiss the just and reasonable protest of a particular community vitally affected by accusing it of narrow communalism. People who are not familiar with the conditions that subsist in this country can very easily be persuaded to condemn the protest of such a community against whose interests such measures are so cleverly conceived.

Congress leaders have declared in season and out of season that the Congress will always think in terms of the poor, but in the course of our inquiry it has been shown and proved to us that discrimination has been made in the case of Muslim peasants and workers by the Congress and Socialist organizations. Agents of zemindars and capitalists have given communal colour to disputes that were purely economic. And once communal colour was given the poor victims of oppression were deprived of all protection from the very organizations which boast of nationalism.[1]

Political v. *Communal Parties*

The growing tendency of political parties to become more and more communal is the chief danger to which democracy is exposed in India. In other countries, political parties are formed on such a basis that the majority and minority parties are interchangeable. Those who vote for Socialists today, can, if they feel dissatisfied, support the Nationalists or Conservatives tomorrow. The strength and following of various political parties vary according to the confidence they inspire among the people and to the extent they are able to fulfil their election pledges. Moreover, the success of a Government is reflected in the popularity of its legislative measures and constant efforts are needed to maintain the majority.

In India, owing to the existence of a permanent religious majority, the complexion of political parties is quite different from those in other democracies. There is always a danger that a party, composed mainly of members of a particular community or followers of a particular religion may pass under the name of a nationalist party. Such a party is exposed to the temptation of raising the communal bogey in order to keep together its dissatisfied elements, who are too insistent on the fulfilment of election pledges, and thus to continue in perpetual majority.

[1] pp. 4-5 of the Report. [Ed.]

Expectations were raised high by the promises made during the last general elections by the Congress to better the condition of the poor. The Muslims being the poorest community in India were the first to show disaffection towards the Congress because they felt that its economic programme was a mere camouflage to enlist their support at the elections and brought them no substantial relief. In any other country these poor classes could have gone over to the opposition without being dubbed communalists.

Speaking at the Students' Federation meeting at Calcutta, Mr M. A. Jinnah stated that the League's fight was not against the Hindu community but against the Congress High Command. The Muslim League Party was allowed to coalesce with other progressive groups or parties whose ideals were nearly the same. This makes it clear that the aim of the Muslim League was not to wage war against other communities in India but to organize the Muslims and devote its energy to the solution of political and economic problems that face the country as a whole.

In order to work with other communities the programme of the Muslim League has to be such as would make it possible for other communities to co-operate with it. If the party adopts an aggressive communal attitude it would be impossible to maintain harmony with other communities. Thus it is to the advantage of the Muslims to have a truly national and liberal programme so that others may co-operate with them. On the other hand if the Muslim League chooses a narrow and communal policy, the Muslims will be condemned to perpetual minorities in almost all the Provinces of India. They will be deprived of all opportunity of having, at any time, an effective voice in the administration of the country. Even in each of the two major Muslim Provinces—the Punjab and Bengal —it is not possible for the Muslims to have a majority without the co-operation of other communities. Thus it is clear that the Muslim League cannot afford to take up an aggressive communal attitude. But unfortunately responsible Congressmen and a section of the Press have made it their duty to misrepresent the views of the leaders of the Muslim League and its activities.

The attitude of the Congress, however, made it impossible for the League to co-operate with it in spite of the efforts of a number of League leaders to maintain cordial relations. The just and legitimate demands of the Muslims were regarded as an inconvenient feature of political life. Contemptuous offers were made to the leaders of the Muslim League. They were asked to liquidate the Muslim League Parliamentary Board, disband the League parties in the Legislatures and to sign unconditionally the Congress pledge. To the patriotic Muslims such a course meant the denial of their right to organize themselves in order to maintain their separate identity and preserve their culture, and a complete surrender to the party which, on its own admission, was mostly composed of Hindus and which had failed to win the confidence of the Muslim voters in the general election.

The Congress parties adopted the very methods for which they had hitherto condemned the British Government. Rival Muslim organizations were started and spoon-fed by Congress Cabinets and Committees. Attempts were made not only to disregard the true representatives of the Muslims, but a virulent campaign of vilification was started against

the Muslim League and its leaders with the help of a few Muslims who signed the Congress pledge. The temptation of office was held out to those who joined the Congress and a few Muslims, who had been returned to the Legislatures on the ticket of the Muslim League Parliamentary Board, were persuaded to sign the Congress pledge and were given places in the Ministries as representatives of the Muslim masses.[1]

Muslim Mass Contact Movement

The last provincial elections brought home to the Congress High Command the fact that the prestige of the Congress as a national organization was in danger. The decision of the Congress not to contest elections in Muslim constituencies generally and the overwhelming defeats of its Muslim candidates in the very few elections that it contested completely exposed the hollowness of its pretensions to represent the Muslim masses.

The significance of the Congress defeats becomes more pronounced in view of the fact that the Congress possessed an unparalleled and a most powerful organization in the country and that no Muslim party was in a position effectively to offer any strong opposition to it. The statement of Pandit Jawaharlal Nehru on the defeats of the Congress candidates in the general election clearly shows that the Congress leadership was greatly alarmed at the opposition. But unfortunately, instead of trying to find out the real cause of this antipathy, the Congress High Command launched the Muslim Mass Contact Movement.

There are many Muslims who firmly believe that the Congress by this movement is trying to destroy Muslim solidarity and create disruption in the community. A number of Muslim workers have been employed to fight their co-religionists by a political party which is predominantly Hindu. Concerted efforts are being made not only to induce Muslims to join the Congress, but also to bring into disrepute the Muslim League.

It has been claimed that the Mass Contact Movement has been in existence for many years and only took a more definite shape at the Lucknow Congress of 1937. It has also been claimed that the movement had never been designed in terms of Muslims only, nor was it merely confined to them.

To understand this movement properly, the methods employed by its promoters must be taken into consideration as well as its effect on the minority community.

Whatever be the idea behind this movement, it remains an undisputed fact that after the general election Mass Contact was carried on amongst the Muslim masses alone. We have not heard of the religious heads of other Minorities working on behalf of the Congress to bring their co-religionists into its fold.

It has been asserted that only such *Ulemas*[2] as had associated with the Congress and were its old friends were asked to support the Congress candidates in the by-elections. Besides, the candidates particularly asked for the support of such men. We think that the argument put forward by an eminent leader of the Congress fully brings to light one

[1] pp. 7-9 of the Report. [Ed.]

[2] A body of scholars trained in Muslim religion and law, and recognized as authorities in these and cognate fields. [Ed.]

fact. We all know that though Pandit Jawaharlal Nehru, in his by-election speeches emphasized economic problems, the candidates themselves were not confident of the efficacy of this programme of the Congress in enlisting the support of the Muslim electors.

The activities of these Congress *Ulemas* are not confined to those enumerated by the Congress leaders. Recently just after a communal outbreak had occurred in Pilibhit, Seth Damodar Dass, accompanied by two *Maulanas*,[1] visited the locality and issued a statement throwing the responsibility for the trouble on the Muslim League, which on inquiry proved to be unfounded. This fact throws some light on the use which is made of some of these learned theologians and also why so much importance is given to these old friends. We wonder if the majority of such persons could have a place in any self-respecting organization. We can now understand the reluctance of the Congress to recognize the Muslim League as the sole representative of the Muslims for this would deprive it of such convenient tools as the *Ulema* who went to Pilibhit with the Bareilly Congress President.

The Congress secured overwhelming majorities in five Provinces and a working majority in the sixth as the result of the first General Election held under the new reforms.[2] The attention of the whole of India was focussed on the Congress and its decision on acceptance of office was eagerly awaited. Everyone believed that a new era would set in with the acceptance of office by the Congress. It was generally taken for granted by progressive Muslims that the gulf that has existed so long between the various communities in India would be bridged once for all, that the differences, for which an alien Government had been held responsible so far, would disappear and that all progressive national elements, whose political ideals were similar, would be brought together for the service of the motherland, and would work a common programme for the freedom of the country.

It was at this moment that Pandit Jawaharlal Nehru, the then Congress President, launched the Muslim Mass Contact programme in right earnest. It was pointed out to the Muslims that the real fight was for bread and butter and there was no sense in their keeping aloof under the banner of the Muslim League. But, . . . even economics in India is communal. Urdu newspapers were started to carry on Congress propaganda among the Muslims and every attempt was made to win over the Muslims. A campaign of vilification against Muslim League leaders, specially Mr Jinnah, formed a part of this movement. An attempt was also made to set up a rival organization to the All-India Muslim League under the name ' Azad ' Muslim League. It was further declared that the Congress, in view of its principles of nationalism, could not enter into an alliance with any communal organization however national may be the latter's policy and programme. Since then, however, we have seen how this declaration has been stretched to make it possible for the Congress to form Ministries in the Frontier and Assam as it suited the interests of the majority community.

[1] A Muslim learned man.

[2] The Provinces in which the Congress obtained clear majorities were Madras, the United Provinces, the Central Provinces, Bihar, and Orissa. It obtained a working majority in Bombay. [Ed.]

It was but natural for patriotic Muslims to feel aggrieved at the attitude taken up by the Congress High Command. The change in the attitude of the Congress leaders, specially those of the United Provinces, was simply a revelation. Though the Mass Contact Movement was on the programme of the Congress no one heard about it until the general election was over and Congress majorities were assured. Even then the Congress leaders, who made and unmade Cabinets and who appointed and dismissed Ministers, avoided the Muslim masses and employed *Maulvis* to convert the Muslim masses to the Congress creed. The *Maulvis*, having no voice in the moulding of the Congress policy and programme, naturally could not promise to solve the real difficulties of the masses, a promise which would have drawn the masses towards the Congress. The *Maulvis* and others employed for the work adopted the line of least resistance by creating a division among the Muslim masses by carrying on a most unworthy propaganda against the leaders of the Muslim League. Under these circumstances it was but natural for the Muslims to conclude that this movement was directed only to lure the Muslims into the Congress fold and a policy of 'divide and rule' was being followed by the Congress to avoid a settlement with the Muslim community on the real issues.

It will not be out of place here to point out that in other countries where political situations are complicated by religious and racial differences, no political party would think of adopting such methods of propaganda as would lead to emphasize the religious differences between various communities. In Great Britain when the question of Irish Home Rule was put in the forefront of the Liberal Party's programme by Gladstone, in spite of a split in the Party itself, no mass contact movement was started to bring the Protestants of Ulster into the fold of the Liberal Party. Discrimination on a communal basis is the last thing to be undertaken by a party which forms the Government.

The Congress Governments should give the right lead to the country. They should attempt to work on the principles of true nationalism and gain the confidence of the Minorities by removing all their suspicions. It was the failure of the Congress in this respect which, together with the correct lead given by the Muslim League and its policy and programme, helped to make the League, in such a short time, such a powerful and representative organization of the Muslims of India.[1]

(3) *Statement issued by Mr M. A. Jinnah on 'The Deliverance Day'*[2]

A great deal of unnecessary controversy has arisen over my appeal to Muslims to celebrate December 22 as a day of deliverance from oppression and, since the guilty do not admit their guilt and public memory is short, I consider it advisable to briefly trace the events that led to the reasons that prompted this appeal.

To commence with, the suggested resolution says nothing more or less than has been said on many previous occasions. The very first complaint against Congress rule was made by me very shortly after

[1] pp. 10-14 of the Report. [Ed.]

[2] *Some Recent Speeches and Writings of Mr Jinnah.* Ed. by Jamil-ud-Din Ahmed (Sh. Muhammad Ashraf, Lahore, 1943), pp. 97-103.

they took office and, in my speech at the Lucknow session of the Muslim League, 1937, I complained against the compulsory singing of *Bande Mataram*, the question of the Congress flag and the supplanting of Urdu by Hindi and even then I called upon the Governors to exercise their special powers.

From then onwards the Congress caucus, like the proverbial steam-roller, gathered speed and complaints of oppression began to pour into the central office. These became so numerous that the Council decided to appoint, in March 1938, the Pirpur Committee which, after an elaborate and painstaking investigation over all the Congress Provinces, submitted its report at the Patna session in December 1938.[1]

The following resolution was there passed at a full session :

'That having regard to the atrocities that have been committed and that elementary rights of the Muslims have been trampled upon in a systematic manner in Bihar, the United Provinces and the Central Provinces, and that the Governors of these Provinces have failed to redress their grievances or protect even the elementary rights of the Mussulmans in these Provinces in spite of all constitutional methods adopted so far by the Muslims, this session of the All-India Muslim League is, therefore, of opinion that the time has come to authorize the Working Committee of the All-India Muslim League to decide and resort to " Direct Action " if and when necessary.'

During this time, in order to prevent direct action being resorted to, I was repeatedly urging upon Governors and the Governor-General, in person and by correspondence, to exercise their special powers and to take executive action to safeguard the rights and interests of the Minorities placed by the Constitution under their protection, and it was only on the 17th April 1939 that the Viceroy intimated that he would take up the matter.

As regards the Congress Ministries, our complaints were dismissed as false, frivolous and vexatious, and even Mr Gandhi, before whom I placed our charges as far back as May 1938, side-tracked the question by writing : ' I believe Congress Committees have been advised to avoid as far as possible all occasions of friction over *Bande Mataram* and the flag . . . The first two demands have come upon an unexpecting public. Nevertheless they undoubtedly have to be examined on their merits, but it does not appear to me to be fair to anticipate the result of the joint committees which I hope will come into being without any hitch . . . '

With no redress, Muslims in certain Provinces grew restive and, in the Central Provinces, ignoring the Working Committee altogether, resorted to direct action over the *Vidya Mandir* scheme.

I may state here that at no stage did the Working Committee favour or encourage direct action and on request being received from Bihar, in July 1939, for permission to launch direct action, the Working Committee instructed the Bihar Muslim League to place the whole case before the Governor-General, the Governor and the Prime Minister and to report later the result of their representation. Similar advice was given to the other Muslim Leagues who contemplated similar measures.

Complaints, however, continued to pour in and on the 27th August 1939, the Council of the League at Delhi passed the following resolution :

[1] See pp. 410-16 above. The Report is dated 15 November 1938. [Ed.]

(*a*) Resolved that this Council, while deploring the policy of the British Government towards the Muslims of India by attempting to force upon them against their will a Constitution and in particular the Federal Scheme, as embodied in the Government of India Act, 1935, which allows a permanent hostile communal majority to trample upon our religious, political, social and economic rights, and the utter neglect and indifference shown by the Viceroy and the Governors in the Congress-governed Provinces in exercising their special powers to protect and secure justice to the Minorities . . .'

In September, war was declared and on the 17th of that month, the Working Committee reaffirmed the above resolution as one of the fundamental conditions of Muslim support and the Viceroy, realizing the gravity of the situation, pressed Mr Gandhi and the Congress leaders to come to an agreement with the Muslim League in the provincial sphere on a coalition basis for at least the duration of the war.

Consequently Babu Rajendra Prasad wrote on the 5th October that the Congress was prepared to request Sir Maurice Gwyer or some other suitable person to investigate only any specific charges which the Muslim League might formulate against the Ministries of the Congress-governed Provinces.[1]

I considered this proposal unsound and unpractical for the following reasons. First, legally and constitutionally, the Congress Working Committee has no place or power in the Constitution. Secondly, the complaints of the Muslims and other Minorities were directed against the Governments of certain Provinces who were responsible to the Legislatures and the electorates and not to the Working Committee. Thirdly, the proposed resolution of the Working Committee could not confer upon the contemplated tribunal the necessary power to summon witnesses and administer oaths. Nor could the tribunal compel the production of documents that might be required and finally I wished to know to whom the tribunal was to report and who would be the final authority to take action, if any, against the Ministries.

If this final authority was the Working Committee, I pointed out that, in my opinion, it was the Working Committee itself that was primarily responsible for the injustices and the wrongs committed and I also could not believe that any adequate action would be taken against the Ministries in view of the fact that the Working Committee had already decided that the Muslim League's charges were false and unfounded.

I also informed Babu Rajendra Prasad that I had already placed the whole matter before the Governor-General and had requested him to take executive action without delay to safeguard and to secure justice for the Minorities.

I must explain, at this stage, that I have never asked either the Governor-General or the Governors to act as a judicial tribunal as is suggested in Mr Gandhi's appeal to me. What I asked them to do was to take executive action to redress our grievances and, by intervention, to secure justice and fair play.

Mr Gandhi's appeal to me to await the Viceroy's opinion is, therefore, based on a wrong assumption and even intervention is not possible now that the Congress Ministries have resigned. For what then should I wait?

[1] See p. 433 below. [Ed.]

However, just after my letter to Babu Rajendra Prasad the Congress Ministries resigned, to the very natural relief of the Muslims and other Minorities, and I immediately decided to appeal for the observance of a day to express our relief and to show its intensity in a manner that would force ears that had hitherto been deaf to listen to us. I might point out that if our appeals had been heard at the proper time, no such action on our part would now be necessary.

This appeal has been variously described as ill-timed, provocative and anti-national and that the Muslims are asked to gloat over the departure of an elected Government and to welcome an official administration.

I gladly deal with these points. As regards the time, my appeal could not appear before it did for reasons already made public, and its connexion or effect on Pandit Jawaharlal Nehru's visit is dealt with by me at the end of my statement.

As regards provocation, let me point out the words of my appeal : ' I trust that all public meetings will be conducted in an orderly manner, with due sense of humility and nothing should be done which will cause offence to any community . . . ' However, to make quite clear my insistence that the day is observed in such spirit, I again state that I look to all District and primary Leagues to ensure that the meetings are held in that spirit. Let there be no hartals, processions or any such demonstrations, but let a spirit of humility and a mood of reflection prevail. There is relief and gratitude in our hearts ; not joy or triumph.

Thirdly, it is extremely unfair and unjust to contend that the Muslims welcome the present administration. It is true that we urge upon them to inquire into our grievances and to redress them, but this is only because it is in their power to do so. On the other hand, my appeal emphasizes that prayers should be offered for the establishment of truly popular Ministries which would do even justice to all communities and interests.

But there is one statement on my appeal that I cannot let pass coming as it does from such an authoritative source as the chairman of the Congress Parliamentary Committee. I am told that all our charges are totally false and unwarranted, and that was to be expected, but I must take notice of his declaration :

' Furthermore, every Premier at my instance had invited his Governor unhesitatingly to intervene in matters affecting the rights and the interests of the Minorities whenever the Governor felt that the action of the Ministry was not correct. When Mr Jinnah recently made the charges, I again instructed every Premier to invite the Governor's attention to them as they also affected him and I was informed that the Governor considered the charges unwarranted.'

The above statement raises a very grave issue, for it makes the Governors accessories after the fact. Let me inform Mr Vallabhai Patel that we have overwhelming evidence in support of our case and, far from shirking an inquiry, as is suggested, I insist that a thorough inquiry should now be made by a properly constituted tribunal invested with all necessary powers, and I now ask that a Royal Commission be appointed

by the British Government, of a purely judicial personnel and composed of judges of His Majesty's High Courts and under the chairmanship of one of the Law Lords of the Privy Council.

I cannot conceive any objections to this demand from the Congress or any other quarter and call upon them to support my request.

(4) *Resolution passed at the Deliverance Day Meetings organized by the All-India Muslim League, 22 December 1939*[1]

This public meeting of the Mussulmans of [*name of the place*] records its opinion that the Congress Ministry has conclusively demonstrated and proved the falsehood of the Congress claim that it represents all interests justly and fairly, by its decidedly anti-Muslim policy. It is the considered opinion of this meeting that the Congress Ministry has failed to safeguard the rights and interests of the Mussulmans and other Minorities and interests.

That the Congress Ministry both in the discharge of their duties of the administration and in the Legislatures have done their best to flout the Muslim opinion, to destroy Muslim culture, and have interfered with their religious and social life, and trampled upon their economic and political rights ; that in matters of differences and disputes the Congress Ministry invariably have sided with, supported and advanced the cause of the Hindus in total disregard and to the prejudice of the Muslim interests.

The Congress Governments constantly interfered with the legitimate and routine duties of District Officers even in petty matters to the serious detriment of the Mussulmans, and thereby created an atmosphere which spread the belief amongst the Hindu public that there was established a Hindu *raj*, and emboldened the Hindus, mostly Congressmen, to ill-treat Muslims at various places and interfere with their elementary rights of freedom. This meeting, therefore, expresses its deep sense of relief at the termination of the Congress régime in various Provinces and rejoices in observing this day as the ' Day of Deliverance ' from tyranny, oppression and injustice during the last two and a half years, and prays to God to grant such strength, discipline and organization to Muslim India as to successfully prevent the advent of such a Ministry again and to establish a truly popular Ministry which would do even justice to all communities and interests.

This meeting urges upon His Excellency the Governor of [*name of the Province*] and his Council of Advisers to inquire into the legitimate grievances of the Mussulmans and the wrongs done to them by the outgoing Congress Ministry, and redress the same at the earliest moment in accordance with the announcements that have been made by the Governors in taking over the Government of various Provinces under Section 93 of the Government of India Act of 1935 and thus assure people that the new régime stands for even justice to all communities and interests concerned.

[1] *Some Recent Speeches and Writings of Mr Jinnah.* Ed. by Jamil-ud-Din Ahmed (Sh. Muhammad Ashraf, Lahore, 1943), pp. 96-7.

(5) *Mr M. A. Jinnah on the Formation of Ministries in the Congress Provinces without Muslim Leaguers, 19 January 1940*[1]

This situation had two very unsatisfactory aspects. First it brought but the completely Hindu composition of the Congress and secondly it would be difficult to ignore and override Muslim-led oppositions as long as Governors of the Provinces were in possession of special powers granted to safeguard Minority interests. Realizing at once that such circumstances would considerably hinder their plans, the Congress played its trump card. It refused to accept office. To the consternation of the Muslims and other Minorities, overnight, the Viceroy and the Governors became suppliants. What would the Congress have them do ? What assurances did the Congress need ? The answer was ready. Give us the undertaking that you will not exercise your special powers and we will accept office. Hastily, the constitutional guardians of Minority and other rights jettisoned their trust and, amidst much mutual appreciation of each other's ' statesmanship ', the Congress and the British Government came into political alliance.[2] Victory number one.

But there was still that troublesome first point. The whole game would be up if purely Hindu Governments took office and in at least three of the six Provinces not a single Muslim had been returned on the Congress ticket and not more than one or two in the others. But what of it ? Surely there must be at least one amongst the Muslim members who would be unable to resist the bait of a Ministership. They would offer the Ministership provided he signed the Congress pledge.

But would the Governor agree to this camouflage ? What did his Instrument of Instructions advise ? ' In making appointments to his Council of Ministers our Governor shall use his best endeavour to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgement is likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But in so acting he shall bear constantly in mind the need of fostering a sense of joint responsibility among his Ministers.'

Anxiously the Working Committee analysed the implication. The instructions seemed to be in two parts. In the first the Governor was instructed to use ' his best endeavour to select as Ministers . . . persons (including as far as practicable members of important minority communities) . . . '. The spirit underlying these words was clear. It was to secure important Minorities a Minister who commanded their confidence and since there was no difference in the political programmes of the Congress and Muslim League Parties in the Legislatures, there was no reason why it was not ' practicable ' for a Muslim League member to be appointed a Minister.

But what about the last words : ' But in so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility

[1] Extracts from an article in *Time and Tide*, London, 19 January 1940, as published in *Some Recent Speeches and Writings of Mr Jinnah*. Ed. by Jamil-ud-Din Ahmed (Sh. Muhammad Ashraf, Lahore, 1943), pp. 114-16.

[2] See pp. 392-7 above. [Ed.]

among his Ministers'? This fortunately could be turned to suit their purpose if the Governor was prepared to allow this second part, advisory and subsidiary to the main instruction, to overrule the first.

They had but to claim that joint responsibility was impossible unless the Muslim Minister was prepared to abide by the decisions of the Working Committee and their point was won. Meekly the Governors acquiesced and in order to allow the Congress to deceive the public by making it appear that it was 'national' and looking after the interests of the Minorities by including a 'representative' of them in the Council of Ministers, accepted as Muslim Ministers individuals who by no stretch of imagination could be regarded as 'representatives' of the Muslim community and who, by signing the Congress pledge, were responsible to the Working Committee alone.

VII. Congress Policy towards Muslims and the Muslim League

(1) *Pandit Jawaharlal Nehru on Development of Contact with Muslim Masses, 19 March 1937*[1]

Only in regard to the Muslim seats did we lack success. But our very failure on this occasion has demonstrated that success is easily in our grasp and the Muslim masses are increasingly turning to the Congress. We failed because we had long neglected working among the Muslim masses and we could not reach them in time. But where we reached, especially in the rural areas, we found almost the same response, the same anti-imperialist spirit, as in others. The communal problem, of which we hear so much, seemed to be utterly non-existent, when we talked to the peasant, whether Hindu, Muslim or Sikh. We failed also among the Muslims because of their much smaller electorate which could be easily manipulated and coerced by authority and vested interests. But I am convinced that, even so, we would have had a much larger measure of success if we had paid more attention to the Muslim masses. They have been too long neglected and misled and they deserved special consideration. I have no manner of doubt that they are turning to the Congress to seek relief from their innumerable burdens and their future co-operation is assured, provided we approach them rightly and on the basis of economic questions.

We have too long thought in terms of pacts and compromises between communal leaders and neglected the people behind them. That is a discredited policy and I trust that we shall not revert to it. And yet some people still talk of the Muslims as a group, dealing with the Hindus or others as a group, a medieval conception which has no place in the modern world. We deal with economic groups today and the problems of poverty and unemployment and national freedom are common for the Hindu, the Muslim, the Sikh and the Christian. As soon as we leave the top fringe, which is continually talking of percentages of seats in the Legislatures and state jobs, and reach the masses, we come up against these problems. This way lies the ending of what has long been known as the communal problem.

[1] Extract from Presidential Address of the All-India National Convention of Congress Legislators.—*The Indian Annual Register* (1937), vol. I, pp. 207-8.

One of the most remarkable signs of the times is the ferment amongst the Muslims in India, both the intelligentsia and the masses. Without any effective leadership they have drifted aimlessly, and they resent this helpless position and feel that the communal leadership they have had has weakened them politically, in spite of the trivial and superficial gains which they are supposed to have got from an imperialism which seeks to wean them away from the national movement. Muslim young men and old, and the Muslim press, are full of this self-analysis, and the desire to get out of the communal rut and line up with the forces of freedom and progress is strong within them. They see how the Congress has swept away Hindu communal organization, how it has captured the imaginations of the masses, and they feel a little desolate and left out. They want to share in the triumphs of today and tomorrow, and are prepared to take their share of the burdens also. And so this election and our campaign, though they resulted in the loss of Muslim seats as a rule, have been a triumph for us even in regard to the Muslims. They have gone some way to lay the ghost of communalism. It is for us now to go ahead and welcome the Muslim masses and intelligentsia in our great organization and rid this country of communalism in every shape and form.

(2) *Pandit Jawaharlal Nehru's letter to Mr M. A. Jinnah, 6 April 1938*[1]

I am glad that you have indicated in your last letter[2] a number of points which you have in mind. The enclosures you have sent mention these and I take it that they represent your view-point. I was somewhat surprised to see this list as I had no idea that you wanted to discuss many of these matters with us. Some of these are wholly covered by previous decisions of the Congress, some others are hardly capable of discussion.

As far as I can make out from your letter and the enclosures you have sent you wish to discuss the following matters :

1. The Fourteen Points formulated by the Muslim League in 1929.[3]
2. The Congress should withdraw all opposition to the Communal Award and should not describe it as a negation of nationalism.
3. The share of the Muslims in the State Services should be definitely fixed in the Constitution by statutory enactment.
4. Muslim personal law and culture should be guaranteed by statute.
5. The Congress should take in hand the agitation in connexion with the Shahidganj mosque and should use its moral pressure to enable the Muslims to gain possession of the mosque.
6. The Muslims' right to call *Azan* and perform their religious ceremonies should not be fettered in any way.
7. Muslims should have freedom to perform cow-slaughter.

[1] *Nehru-Jinnah Correspondence* (All-India Congress Committee, Allahabad), pp. 61-73. [Ed.]

[2] The reference is to the letter from Mr Jinnah to Mr Nehru dated 17 March 1938. An article appearing in *The New Times*, Lahore, dated 1 March 1938, which formed one of the enclosures to this letter, has been extracted above, p. 407-10. [Ed.]

[3] See pp. 245-7 above. [Ed.]

8. Muslim majorities in the Provinces, where such majorities exist at present, must not be affected by any territorial redistribution or adjustments.
9. The *Bande Mataram* song should be given up.
10. Muslims want Urdu to be the national language of India and they desire to have statutory guarantees that the use of Urdu shall not be curtailed or damaged.
11. Muslim representation in local bodies should be governed by the principles underlying the Communal Award, that is separate electorates and population strength.
12. The tri-colour flag should be changed or, alternatively, the flag of the Muslim League should be given equal importance.
13. Recognition of the Muslim League as the one authoritative and representative organization of Indian Muslims.
14. Coalition Ministries.

It is further stated that the formula evolved by you and Babu Rajendra Prasad in 1935[1] does not satisfy the Muslims now and nothing on those lines will satisfy them.

It is added that the list given above is not a complete list and that it can be augmented by the addition of further ' demands '. Not knowing these possible and unlimited additions I can say nothing about them. But I should like to deal with the various matters specifically mentioned and to indicate what the Congress attitude has been in regard to them.

But before considering them, the political and economic background of the free India we are working for has to be kept in mind, for ultimately that is the controlling factor. Some of these matters do not arise in considering an independent India or take a particular shape or have little importance. We can discuss them in terms of Indian independence or in terms of the British dominance of India continuing. The Congress naturally thinks in terms of independence, though it adjusts itself occasionally to the present transitional and temporary phases. It is thus not interested in amendments to the present Constitution, but aims at its complete removal and its substitution by a Constitution framed by the Indian people through a Constituent Assembly.

Another matter has assumed an urgent and vital significance and this is the exceedingly critical international situation and the possibility of war. This must concern India greatly and affect her struggle for freedom. This must therefore be considered the governing factor of the situation and almost everything else becomes of secondary importance, for all our efforts and petty arguments will be of little avail if the very foundation is upset. The Congress has clearly and repeatedly laid down its policy in the event of such a crisis and stated that it will be no party to imperialist war. Peace, therefore, and Indian independence is its basic policy. The Congress will very gladly and willingly co-operate with the Muslim League and all other organizations and individuals in the furtherance of this policy.

I have carefully looked through the various matters to which you have drawn attention in your letter and its enclosures and I find that there

[1] The unity talks between Mr Jinnah and Babu Rajendra Prasad were held from 23 January to 1 March 1935. The object was to find a basis of agreement to replace the Communal Award. The talks, however, ended in failure. [Ed.]

is nothing in them which refers to or touches the economic demands of the masses or affects the all-important questions of poverty and unemployment. For all of us in India these are the vital issues and unless some solution is found for them, we function in vain. The question of State Services, howsoever important and worthy of consideration it might be, affects a very small number of people. The peasantry, industrial workers, artisans and petty shopkeepers form the vast majority of the population and they are not improved in any way by any of the demands listed above. Their interests should be paramount.

Many of the ' demands ' involve changes of the Constitution which we are not in a position to bring about. Even if some such changes are desirable in themselves, it is not our policy to press for minor constitutional changes. We want to do away completely with the present Constitution and replace it by another for a free India.

In the same way the desire for statutory guarantees involves constitutional changes which we cannot give effect to. All we can do is to state that in a future Constitution for a free India we want certain guarantees to be incorporated. We have done this in regard to religious, cultural, linguistic and other rights of Minorities in the Karachi resolution on Fundamental Rights.[1] We would like these fundamental rights to be made a part of the Constitution.

I now deal with the various matters listed above.

1. The Fourteen Points, I had thought, were somewhat out of date. Many of their provisions have been given effect to by the Communal Award and in other ways ; some others are entirely acceptable to the Congress ; yet others require constitutional changes which, as I have mentioned above, are beyond our present competence. Apart from the matters covered by the Communal Award and those involving a change in the Constitution, one or two matters remain which give rise to differences of opinion and which are still likely to lead to considerable argument.

2. The Congress has clearly stated its attitude towards the Communal Award, and it comes to this that it seeks alterations only on the basis of mutual consent of the parties concerned. I do not understand how anyone can take objection to this attitude and policy. If we are asked to describe the Award as not being anti-national, that would be patently false. Even apart from what it gives to various groups, its whole basis and structure are anti-national and come in the way of the development of national unity. As you know it gives an overwhelming and wholly undeserving weightage to the European elements in certain parts of India. If we think in terms of an independent India we cannot possibly fit in this Award with it. It is true that under stress of circumstances we have sometimes to accept as a temporary measure something that is on the face of it anti-national. It is also true that in the matters governed by the Communal Award we can only find a satisfactory and abiding solution by the consent and goodwill of the parties concerned. That is the Congress policy.

3. The fixing of the Muslims' share in the State Services by statutory enactment necessarily involves the fixing of the shares of other groups and communities similarly. This would mean a rigid and com-

[1] See Part II, pp. 248-50 above. [Ed.]

partmental State structure which will impede progress and development. At the same time it is generally admitted that State appointments should be fairly and adequately distributed and no community should have cause to complain. It is far better to do this by convention and agreement. The Congress is fully alive to this issue and desires to meet the wishes of various groups in the fullest measure, so as to give to all minority communities, as stated in No. 11 of the Fourteen Points, ' an adequate share in all the services of the State and in Local Self-Governing Bodies having due regard to the requirements of efficiency '. The State today is becoming more and more technical and demands expert knowledge in its various departments. It is right that, if a community is backward in this technical and expert knowledge, special efforts should be made to give it this education to bring it up to a higher level.

I understand that at the Unity Conference held at Allahabad in 1933 or thereabouts, a mutually satisfactory solution of this question of State services was arrived at.

4. As regards protection of culture the Congress has declared its willingness to embody this in the fundamental laws of the Constitution. It has also declared that it does not wish to interfere in any way with the personal law of any community.

5. I am considerably surprised at the suggestion that the Congress should take in hand the agitation in connexion with the Shahidganj mosque. That is a matter to be decided either legally or by mutual agreement. The Congress prefers in all such matters the way of mutual agreement and its services can always be utilized for this purpose where there is an opening for them and a desire to this effect on the part of the parties concerned. I am glad that the Premier of the Punjab has suggested that this is the only satisfactory way to a solution of the problem.

6. The right to perform religious ceremonies should certainly be guaranteed to all communities. The Congress resolution about this is quite clear. I know nothing about the particular incident relating to a Punjab village which has been referred to. No doubt many instances can be gathered together from various parts of India where petty interferences take place with Hindu, Muslim or Sikh ceremonies. These have to be tactfully dealt with wherever they arise. But the principle is quite clear and should be agreed to.

7. As regards cow-slaughter there has been a great deal of entirely false and unfounded propaganda against the Congress suggesting that the Congress was going to stop it forcibly by legislation. The Congress does not wish to undertake any legislative action in this matter to restrict the established rights of the Muslims.

8. The question of territorial redistribution has not arisen in any way. If and when it arises it must be dealt with on the basis of mutual agreement of the parties concerned.

9. Regarding the *Bande Mataram* song the Working Committee issued a long statement in October last to which I would invite your attention. First of all it has to be remembered that no formal national anthem has been adopted by the Congress at any time. It is true, however, that the *Bande Mataram* song has been intimately associated with Indian nationalism for more than thirty years and numerous associations of sentiment and sacrifice have gathered round it. Popular

songs are not made to order, nor can they be successfully imposed. They grow out of public sentiment. During all these thirty or more years the *Bande Mataram* song was never considered as having any religious significance and was treated as a national song in praise of India. Nor, to my knowledge, was any objection taken to it except on political grounds by the Government. When, however, some objections were raised, the Working Committee carefully considered the matter and ultimately decided to recommend that certain stanzas, which contained certain allegorical references, might not be used on national platforms or occasions. The two stanzas that have been recommended by the Working Committee for use as a national song have not a word or a phrase which can offend anybody from any point of view and I am surprised that anyone can object to them. They may appeal to some more than to others. Some may prefer another national song ; they have full freedom to do so. But to compel large numbers of people to give up what they have long valued and grown attached to is to cause needless hurt to them and injure the national movement itself. It would be improper for a national organization to do this.

10. About Urdu and Hindi I have previously written to you and have also sent you my pamphlet on *The Question of Language*. The Congress has declared in favour of guarantees for languages and culture. It wants to encourage all the great provincial languages of India and at the same time to make Hindustani, as written both in the *nagri* and Urdu scripts, the national language. Both scripts should be officially recognized and the choice should be left to the people concerned. In fact this policy is being pursued by the Congress Ministries.

11. The Congress has long been of opinion that joint electorates are preferable to separate electorates from the point of view of national unity and harmonious co-operation between the different communities. But joint electorates, in order to have real value, must not be imposed on unwilling groups. Hence the Congress is quite clear that their introduction should depend on their acceptance by the people concerned. This is the policy that is being pursued by the Congress Ministries in regard to local bodies. Recently in a bill dealing with Local Bodies introduced in the Bombay Assembly, separate electorates were maintained but an option was given to the people concerned to adopt a joint electorate, if they so chose. This principle seems to be in exact accordance with No. 5 of the Fourteen Points, which lays down that ' Representation of communal groups shall continue to be by means of separate electorate as at present, provided that it shall be open to any community at any time, to abandon its separate electorate in favour of joint electorate '. It surprises me that the Muslim League group in the Bombay Assembly should have opposed the Bill with its optional clause although this carried out the very policy of the Muslim League.

May I also point out that in the resolution passed by the Muslim League in 1929, at the time it adopted the Fourteen Points, it was stated that ' the Mussulmans will not consent to joint electorates unless Sind is actually constituted into a separate Province and reforms in fact are introduced in the North-West Frontier Province and Baluchistan on the same footing as in other provinces '. Since then Sind has been separated and the North-West Frontier Province has been placed on a level with

other Provinces. So far as Baluchistan is concerned the Congress is committed to a levelling up of this area in the same way.

12. The national tricolour flag was adopted originally in 1920 by the Congress after full and careful consultation with eminent Muslim, Sikh and other leaders. Obviously a country and a national movement must have a national flag representing the nation and all communities in it. No communal flag can represent the nation. If we did not possess a national flag now we would have to evolve one. The present national flag had its colours originally selected in order to represent the various communities, but we did not like to lay stress on this communal aspect of the colours. Artistically I think the combination of orange, white and green has resulted in a flag which is probably the most beautiful of all national flags. For these many years our flag has been used and it has spread to the remotest village and brought hope and courage and a sense of all-India unity to our masses. It has been associated with great sacrifices on the part of our people, including Hindus, Muslims and Sikhs, and many have suffered lathi blows and imprisonment and even death in defending it from insult or injury. Thus a powerful sentiment has grown up in its favour. On innumerable occasions Maulana Mohamad Ali, Maulana Shaukat Ali and many leaders of the Muslim League today have associated themselves with this flag and emphasized its virtues and significance as a symbol of Indian unity. It has spread outside the Congress ranks and been generally recognized as the flag of the nation. It is difficult to understand how anyone can reasonably object to it now.

Communal flags cannot obviously take its place for that can only mean a host of flags of various communities being used together and thus emphasizing our disunity and separateness. Communal flags might be used for religious functions but they have no place at any national function or over any public building meant for various communities.

May I add that during the past few months, on several occasions, the national flag has been insulted by some members or volunteers of the Muslim League. This has pained us greatly but we have deliberately avoided anything in the nature of conflict in order not to add to communal bitterness. We have also issued strict orders, and they have been obeyed, that no interference should take place with the Muslim League flag, even though it might be inappropriately displayed.

13. I do not understand what is meant by our recognition of the Muslim League as the one and only organization of Indian Muslims. Obviously the Muslim League is an important communal organization and we deal with it as such. But we have to deal with all organizations and individuals that come within our ken. We do not determine the measure of importance or distinction they possess. There are a large number, about a hundred thousand, of Muslims on the Congress rolls, many of whom have been our close companions, in prisons and outside, for many years and we value their comradeship highly. There are many organizations which contain Muslims and non-Muslims alike, such as Trades Unions, Peasant Unions, Kisan Sabhas, Debt Committees, Zamindar Associations, Chambers of Commerce, Employers' Associations, etc., and we have contacts with them. There are special Muslim organizations such as the Jamiat-ul-Ulema, the Proja Party, the Ahrars and others, which claim attention. Inevitably the more important the

organization the more the attention paid to it, but this importance does not come from outside recognition but from inherent strength. And the other organizations, even though they might be younger and smaller, cannot be ignored.

14. I should like to know what is meant by coalition Ministries. A Ministry must have a definite political and economic programme and policy. Any other kind of Ministry would be a disjointed and ineffective body, with no clear mind or direction. Given a common political and economic programme and policy, co-operation is easy. You know probably that some such co-operation was sought for and obtained by the Congress in the Frontier Province. In Bombay also repeated attempts were made on behalf of the Congress to obtain this co-operation on the basis of a common programme. The Congress has gone to the Assemblies with a definite programme and in furtherance of a clear policy. It will always gladly co-operate with other groups, whether it is in a majority or a minority in an Assembly, in furtherance of that programme and policy. On that basis I can conceive of even coalition Ministries being formed. Without that basis the Congress has no interest in a Ministry or in an Assembly.

I have dealt, I am afraid at exceeding length, with the various points raised in your letter and its enclosures. I am glad that I have had a glimpse into your mind through this correspondence as this enables me to understand a little better the problems that are before you and perhaps others. I agree entirely that it is the duty of every Indian to bring about harmonious joint effort of all of us for the achievement of India's freedom and the ending of the poverty of her people. For me, and I take it for most of us, the Congress has been a means to that end and not an end in itself. It has been a high privilege for us to work through the Congress because it has drawn to itself the love of millions of our countrymen, and through their sacrifice and united effort, taken us a long way to our goal. But much remains to be done and we have all to pull together to that end.

Personally the idea of pacts and the like does not appeal to me, though perhaps they might be necessary occasionally. What seems to me far more important is a more basic understanding of each other, bringing with it the desire and ability to co-operate together. That larger co-operation, if it is to include our millions, must necessarily be in the interests of these millions. My mind therefore is continually occupied with the problems of these unhappy masses of this country and I view all other problems in this light. I should like to view the communal problem also in this perspective for otherwise it has no great significance for me.

(3) *Controversy over the Muslim League Claim to act as the sole Representative of the Muslims :*

(A) *Resolutions passed by the Working Committee of the All-India Muslim League, 4-5 June 1938*[1]

RESOLUTION NO. 1

The Executive Council of the All-India Muslim League . . . find that it is not possible for the All-India Muslim League to treat or

[1] *All-India Muslim League, Resolutions, 1937-8*, p. 28.

negotiate with the Congress the question of the Hindu-Muslim settlement except on the basis that the Muslim League is the authoritative and representative organization of the Mussulmans of India.

RESOLUTION NO. 2

The Council have also considered the letter of Mr Gandhi dated the 22nd May 1938 and are of opinion that it is not desirable to include any Muslim in the personnel of the proposed Committee that may be appointed by the Congress.

RESOLUTION NO. 3

The Executive Council wish to make it clear that it is the declared policy of the All-India Muslim League that all other Minorities should have their rights and interests safeguarded so as to create a sense of security amongst them and win their confidence and the All-India Muslim League will consult the representatives of such Minorities and any other interest as may be involved, when necessary.

(B) *Letter from Mr Subhas Chandra Bose to Mr M. A. Jinnah, 25 July 1938*[1]

. . . The first resolution of the League Council defines the status of the League. If it means that, before we proceed to set up a machinery for considering the terms of settlement of the communal question, the Congress should recognize the status as defined in that resolution, there is an obvious difficulty. Though the resolution does not use the adjective 'only', the language of the resolution means that the adjective is understood. Already the Working Committee has received warnings against recognizing the exclusive status of the League. There are Muslim organizations which have been functioning independently of the Muslim League. Some of them are staunch supporters of the Congress. Moreover, there are individual Muslims who are Congressmen, some of whom exercise no inconsiderable influence in the country. Then there is the Frontier Province which is overwhelmingly Muslim and which is solidly with the Congress. You will see that in the face of these known facts it is not only impossible, but improper for the Congress to make the admission which the first resolution of the League Council apparently desires the Congress to make. It is suggested that the status of organizations does not accrue to them by any defining of it. It comes through the service to which a particular organization has dedicated itself. The Working Committee therefore hopes that the League Council will not ask the Congress to do the impossible. Is it not enough that the Congress is not only willing but eager to establish the friendliest relations with the League and to come to an honourable understanding over the much vexed Hindu-Muslim question ?

At this stage it may perhaps be as well to state the Congress claim. Though it is admitted that the largest number of persons to be found on the numerous Congress registers are Hindus, Congress has a fairly large number of Muslims and members of other communities professing different faiths. It has been an unbroken tradition with the Congress

[1] *All-India Muslim League, Resolutions, 1937-8*, pp. 28-9. Mr Subhas Chandra Bose was the President of the Indian National Congress, and Mr Jinnah of the All-India Muslim League, at the time. [Ed.]

to represent all communities, all races, and classes to whom India is their home. From its inception it has often had distinguished Muslims as Presidents and as General Secretaries who enjoyed the confidence of the Congress and of the country. The Congress tradition is that though a Congressman does not cease to belong to the faith in which he is born and bred up, no one comes to the Congress by virtue of his faith ; he is in and of the Congress by virtue of his endorsement of the political principles and policy of the Congress. The Congress therefore is in no sense a communal organization. In fact it has always fought the communal spirit because it is detrimental to the growth of pure and undefiled nationalism. But whilst the Congress makes this claim, and has sought, with more or less success, to live up to the claim, the Working Committee asks for no recognition from the League Council. The Committee would be glad if your Council would come to an understanding with the Congress in order that we might achieve national solidarity and whole-heartedly work for realizing our common destiny.

As to the second resolution of the Council, I am afraid that it is not possible for the Working Committee to conform to the desire expressed therein.

The third resolution, the Working Committee is unable to understand. So far as the Working Committee is aware, the Muslim League is purely a communal organization, in the sense that it seeks to serve Muslim interests and its membership too is open only to Muslims. The Working Committee also has all along understood that so far as the League is concerned, it desires, and rightly, a settlement with the Congress on the Hindu-Muslim question and not on questions affecting all Minorities. So far as the Congress is concerned, if the other Minorities have a grievance against the Congress, it is always ready to deal with them as it is its bounden duty to do, being by its very constitution and organization representative of all India without distinction of caste or creed.

In view of the foregoing I hope that it will be possible for us to take up the next stage in our negotiations for reaching settlement.

(C) *Letter from Mr M. A. Jinnah to Mr Subhas Chandra Bose, 2 August 1938*[1]

The Council (of the League) is fully convinced that the Muslim League is the only authoritative and representative political organization of the Mussulmans of India. This position was accepted when the Congress-League Pact was arrived at in 1916 at Lucknow and ever since, till 1935 when Jinnah-Rajendra Prasad conversations took place, it has not been questioned. The All-India Muslim League, therefore, does not require any admission or recognition from the Congress nor did the resolution of the Executive Council passed at Bombay. But in view of the fact that the position—in fact the very existence—of the League had been questioned by Pandit Jawaharlal Nehru, the President of the Congress, in one of his statements wherein he asserted that there were only two parties in the country, viz. the British Government and the Congress, it was considered necessary by the Executive Council to inform the Congress of the basis on which the negotiations between the two organizations could proceed.

[1] *All-India Muslim League, Resolutions, 1937-8*, pp. 37-40.

Besides, the very fact that Congress approached the Muslim League to enter into negotiations for a settlement of the Hindu-Muslim question presupposed the authoritative and representative character of the League and as such its right to come to an agreement on behalf of the Mussulmans of India.

The Council are aware of the fact that there is a Congress coalition Government in the North-West Frontier Province and also that there are some Muslims in the Congress organization in other Provinces. But the Council is of opinion that these Muslims in the Congress do not and cannot represent the Mussulmans of India, for the simple reason that their number is very insignificant and that as members of the Congress they have disabled themselves from representing or speaking on behalf of the Muslim community. Were it not so, the whole claim of the Congress alleged in your letter regarding its national character would fall to the ground.

As regards ' the other Muslim organizations ' to which reference has been made in your letter, but whom you have not even named, the Council considers that it would have been more proper if no reference had been made to them. If they collectively or individually had been in a position to speak on behalf of the Mussulmans of India, the negotiations with the Muslim League for a settlement of the Hindu-Muslim question would not have been initiated by the Presidents of the Congress and Mr Gandhi. However, so far as the Muslim League is concerned it is not aware that any Muslim political organization has ever made a claim that it can speak or negotiate on behalf of the Muslims of India. It is, therefore, very much to be regretted that you should have referred to ' other Muslim organizations ' in this connexion.

The Council is equally anxious to bring about a settlement of ' the much vexed Hindu-Muslim question ' and thus hasten the realization of the common goal, but it is painful to find that subtle arguments are being introduced to cloud the issue and retard the progress of the negotiations.

In view of the facts stated above the Council still hopes that the representative character of the Muslim League will not be questioned and that the Congress will proceed to appoint a committee on that basis.[1]

With reference to the second resolution the Council wishes to point out that it considered undesirable the inclusion of Mussulmans in the

[1] The Jinnah-Bose talks for a communal settlement ended in failure as the Congress refused to recognize the claim of the Muslim League that it was the one and only representative organization of Muslim interests and no other organization should be allowed to enter the picture and, by implication, admit that the Congress was a Hindu organization. This stand of Mr Jinnah, consistently maintained by him throughout his negotiations with the Congress in the coming years, prevented all talks for a communal settlement from proceeding beyond the preliminary stages. For instance, referring to his attempts to bring Mr Jinnah and Gandhiji together with a view to solve the political deadlock in April 1941, Sir Tej Bahadur Sapru observed : ' In his statement Mr Jinnah says that he showed his willingness to meet Mr Gandhi, or any other Hindu leader to have a heart to heart conversation. He would have been more accurate if he had drawn attention to the following sentence in his own letter to me : " I have always been ready and willing to see Mr Gandhi, or any other Hindu leader, on behalf of the Hindu community and do all I can to help the solution of the Hindu-Muslim problem." . . . Mr Gandhi as will appear from his letter was not in a position to agree to this condition. There the matter ended, and it was no use carrying the matter further with Mr Jinnah.' [Ed.]

Committee that might be appointed by the Congress because it would meet to solve and settle the Hindu-Muslim question and so in the very nature of the issues involved they would not command the confidence of either Hindus or the Mussulmans and their position indeed would be most embarrassing. The Council, therefore, request you to consider the question in the light of the above observations.

With reference to the third resolution it was the memorandum of the Congress referred to in your letter dated the 15th of May 1938 in which mention of other Minorities was made and the Muslim League expressed its willingness to consult them, if and when it was necessary in consonance with its declared policy.

(4) *Inquiry into Muslim Grievances in Congress Provinces* :[1]

(A) *Letter from Dr Rajendra Prasad to Mr Jinnah, 5 October 1939*

We feel that these charges (of anti-Muslim policy pursued by the Congress Ministries) are wholly unfounded and are based on misapprehension and one-sided reports that might have reached you and the League. The Governments concerned have inquired into the matter whenever such charges have been made and have denied them. On a previous occasion we expressed our willingness to have any specific instances investigated by impartial authority. We feel strongly, and I am sure you will agree with us, that such charges, when seriously made, should be inquired into and either substantiated or disproved. We would like this course to be adopted in regard to any specific instances that are put forward. If you agree, we could request the highest judicial authority in India, Sir M. Gwyer, Chief Justice of the Federal Court, to inquire into this matter. In the event of his not being available, some other person of a similar status and judicial position might be approached.

(B) *Letter from Mr Jinnah to Dr Rajendra Prasad, 6 October 1939*

I beg to inform you that I have already placed the whole case before the Viceroy and the Governor-General and have requested him to take up the matter without delay as he and the Governors of the Provinces have been expressly authorized under the Constitution and are entrusted with the responsibility to protect the rights and the interests of the Minorities.

The matter is now under His Excellency's consideration and he is the proper authority to take such action and adopt such measures as would meet our requirements and would restore complete sense of security and satisfaction amongst the Mussulmans in those Provinces where the Congress Ministries are in charge of the administration.[2]

[1] *The Indian Annual Register* (1939), vol. II, pp. 233-4.
Dr Rajendra Prasad was the President of the Indian National Congress, and Mr Jinnah of the All-India Muslim League, at the time. [Ed.]

[2] See also pp. 410-16 above. [Ed.]